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CS FOR HOUSE BILL NO. 331(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Alaska Tax Credit Certificate Bond Corporation; relating to
2 the issuance of bonds by the Alaska Tax Credit Certificate Bond Corporation; relating
3 to purchases of tax credit certificates and refunds and payments of tax credits; relating
4 to the oil and gas tax credit fund; relating to overriding royalty interest agreements; and
5 providing for an effective date."

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

7 * **Section 1.** AS 36.30.850(b) is amended by adding new paragraphs to read:

8 (49) contracts of the Alaska Tax Credit Certificate Bond Corporation
9 under AS 37.18;

10 (50) overriding royalty interest agreements under AS 44.37.230.

11 * **Sec. 2.** AS 37 is amended by adding a new chapter to read:

12 **Chapter 18. Alaska Tax Credit Certificate Bond Corporation.**

13 **Sec. 37.18.010. Alaska Tax Credit Certificate Bond Corporation.** The

Alaska Tax Credit Certificate Bond Corporation is established in the Department of Revenue. The corporation is a public corporation and government instrumentality managed by a board of directors. The purpose of the corporation is to finance under AS 43.55.028

(1) the purchase of

(A) transferable tax credit certificates issued under AS 43.55.023;

(B) production tax credit certificates issued under AS 43.55.025; and

(2) the payment of refunds and payments claimed under AS 43.20.046, 43.20.047, or 43.20.053.

Sec. 37.18.020. Board of directors. The directors of the corporation are the commissioner of commerce, community, and economic development, the commissioner of administration, and the commissioner of revenue. If a director is absent or otherwise unable to act, the director's designee in the department shall act as a director of the corporation in the director's place.

Sec. 37.18.030. Bond authorization; powers of the corporation. (a) The issuance and sale of bonds by the corporation is authorized as provided in this section for purposes of financing purchases, refunds, and payments under AS 43.55.028 and the costs of issuance and administration of the bonds. The net proceeds of the sale of the bonds remaining after payment of costs of issuance and administration may be disbursed to the commissioner of revenue for purchases, refunds, and payments under AS 43.55.028. Accrued interest paid on the bonds shall be paid into the reserve fund. The corporation may not issue bonds, except for refunding bonds, after December 31, 2021.

(b) The total unpaid principal amount of bonds, including refunding bonds, but excluding refunded bonds, issued by the corporation for the purposes of financing purchases, refunds, and payments under AS 43.55.028 may not exceed \$1,000,000,000.

(c) The bonds do not constitute a general obligation of the state and are not state debt within the meaning of art. IX, sec. 8, Constitution of the State of Alaska.

1 Authorization by the legislature and ratification by qualified voters of the state is not
2 required under art. IX, sec. 8, Constitution of the State of Alaska.

3 (d) The corporation may enter into agreements with other state agencies as
4 necessary or convenient to implement this chapter.

5 (e) The corporation may contract for the services of underwriters, paying
6 agents, trustees, escrow agents, bond printers, rating agencies, bond insurance, credit
7 enhancement providers, accountants, financial advisors, disclosure counsel, and bond
8 counsel, and other services as are necessary or desirable to accomplish the issuance
9 and sale of bonds.

10 **Sec. 37.18.040. Reserve fund.** (a) The corporation may establish and maintain
11 a special fund called the Alaska Tax Credit Certificate Bond Corporation reserve fund.
12 The reserve fund consists of

13 (1) money appropriated to the reserve fund by the legislature for the
14 purpose of the reserve fund in accordance with the provisions of (g) of this section;

15 (2) proceeds of bonds required to be deposited in the fund by terms of
16 a

17 (A) contract between the corporation and its bondholders; or

18 (B) resolution of the corporation with respect to the proceeds of
19 bonds;

20 (3) other money appropriated by the legislature to the reserve fund;
21 and

22 (4) other money of the corporation that it decides to deposit in the
23 reserve fund.

24 (b) Money in the reserve fund shall be held and applied solely to the payment
25 of the interest on and principal of bonds of the corporation as the interest and principal
26 become due and payable to the retirement of bonds, or for disbursement to the
27 commissioner of revenue for purchases or payments under AS 43.55.028. Money may
28 not be withdrawn if a withdrawal would reduce the amount in the reserve fund to an
29 amount less than the required debt service reserve except for payment of interest then
30 due and payable on bonds and the principal of bonds then maturing and payable and
31 for the retirement of bonds in accordance with the terms of a contract between the

1 corporation and its bondholders and for which payments of other money of the
2 corporation is not then available.

3 (c) Money in the reserve fund in excess of the required debt service reserve,
4 whether because of investment or otherwise, may be withdrawn at any time by the
5 corporation for disbursement by the commissioner of revenue for purchases or
6 payments under AS 43.55.028 or transferred to another fund or account of the
7 corporation.

8 (d) Money in the reserve fund may be invested in the same manner and on the
9 same conditions as permitted for investment of funds belonging to the state or held in
10 the treasury under AS 37.10.070; however, the corporation may agree with the
11 bondholders to further limit those investments.

12 (e) For purposes of valuation, investments in the reserve fund shall be valued
13 at par or, if purchased at less than par, at cost unless otherwise provided by resolution
14 of the corporation. Valuation on a particular date shall include the amount of interest
15 then earned or accrued to that date on the money or investments in the reserve fund.

16 (f) Notwithstanding any other provision of this chapter, the corporation may
17 not issue bonds unless there is in the reserve fund the required debt service reserve for
18 all bonds then issued and outstanding and for the bonds to be issued; however, the
19 corporation may satisfy this requirement by depositing as much of the proceeds of the
20 bonds to be issued, on their issuance, as is needed to meet the required debt service
21 reserve or by funding the reserve fund with cash, a surety bond, letter of credit, or
22 other instrument in the amount necessary to meet the required debt service reserve.
23 The corporation may, at any time, issue its bonds or notes for the purpose of
24 increasing the amount in the reserve fund to the required debt service reserve, or to
25 meet whatever higher or additional reserve that may be fixed by the corporation with
26 respect to the fund.

27 (g) To ensure the maintenance of the required debt service reserve in the
28 reserve fund, the legislature may appropriate annually to the corporation for deposit in
29 the fund the sum, certified by the chair of the corporation to the governor and to the
30 legislature, that is necessary to restore the fund to an amount equal to the required debt
31 service reserve. The chair annually, before January 30, shall make and deliver to the

1 governor and to the legislature a certificate stating the sum required to restore the fund
2 to that amount, and the certified sum may be appropriated and paid to the corporation
3 during the then current state fiscal year. Nothing in this subsection creates a debt or
4 liability of the state.

5 (h) All references to the reserve fund in this section include special accounts
6 within the reserve fund that may be created by the corporation to secure the payment
7 of particular bonds.

8 (i) The commissioner of revenue may, subject to appropriation, lend surplus
9 money in the general fund to the corporation for deposit to any account in the reserve
10 fund in an amount equal to the required debt service reserve. The loans shall be made
11 on the terms and conditions that may be agreed on by the commissioner of revenue
12 and the corporation, including, without limitation, terms and conditions providing that
13 the loans need not be repaid until the obligations of the corporation secured and to be
14 secured by the account in the reserve fund are no longer outstanding.

15 (j) In this section, "required debt service reserve" means, on the date of
16 computation, the amount required to be on deposit in the reserve fund as provided by
17 resolution of the corporation.

18 **Sec. 37.18.050. Bond terms.** (a) The bonds may be issued and sold at public
19 or negotiated sale in the manner, in the amounts or series, and at the time or times that
20 the corporation determines the bonds, or each series of them, shall be sold at the price
21 and on the terms, conditions, and covenants set by the corporation after considering
22 market conditions. Interest rates may be fixed or variable. The corporation shall
23 publish notice of an adopted resolution.

24 (b) The bonds mature at the time or times fixed by the corporation. The bonds
25 may be subject to redemption before their fixed maturities, as determined by the
26 corporation, with or without a premium or premiums. The bonds may be in
27 denominations determined by the corporation; may be issued in fully or partially
28 registered form; must be payable as to principal and interest at the place or places
29 determined by the corporation; must be signed in the manner provided by the
30 corporation; and must be issued under and subject to the terms, conditions, covenants,
31 and protective features safeguarding payment of the bonds as found necessary by the

1 corporation. The corporation may, when necessary or desirable, enter into an
2 agreement with a provider of credit enhancement to provide liquidity or security for
3 the bonds, including bond insurance, letters of credit, surety bonds, or standby bond
4 purchase agreements.

5 (c) If the corporation finds it reasonably necessary, the corporation may select
6 a trustee or trustees for the holders of the bonds, or any series of them, for the
7 safeguarding and disbursement of any of the money in the bond reserve fund or for
8 duties with respect to the enforcement, authentication, delivery, payment, and
9 registration of the bonds as the corporation may determine. The corporation shall fix
10 the rights, duties, powers, and obligations of the trustee or trustees.

11 (d) In its determination of all matters and questions relating to the issuance
12 and sale of the bonds and the fixing of their maturities, terms, conditions, and
13 covenants as provided in (a) and (b) of this section, the decisions of the corporation
14 shall be those that are reasonably necessary for the best interests of the state and its
15 inhabitants and that will accomplish the most advantageous sale of the bonds.
16 Decisions of the corporation, as expressed in a bond resolution, are final and are
17 conclusively considered to comply with the requirements of this chapter.

18 **Sec. 37.18.060. Bond resolution.** The corporation shall authorize the issuance
19 of bonds by adopting a resolution and shall prepare all other documents and
20 proceedings necessary for the issuance, sale, and delivery of the bonds or any part or
21 series of them. The bond resolution must fix the principal amount, denominations,
22 date, maturities, manner of sale, place or places of payment, rights of redemption, if
23 any, terms, form, conditions, and covenants of the bonds or each series of them. The
24 corporation shall publish notice of the adopted resolution.

25 **Sec. 37.18.070. Enforcement by bond owner.** (a) The owner or owners of not
26 less than 10 percent, or a higher percentage as specified in a bond resolution, of the
27 aggregate principal amount of any series or issue of bonds or the trustee for the owners
28 of the bonds or any series of them may, by appropriate proceedings in state court,
29 require and compel the transfer, setting aside, and payment of money and the
30 enforcement of all of the terms, conditions, and covenants as required and provided in
31 this chapter, as appropriate, and the bond resolution.

1 (b) A proceeding under (a) of this section may be commenced and conducted
2 only in the Superior Court for the State of Alaska, First Judicial District at Juneau.

3 **Sec. 37.18.080. Purposes; limitation on issuance.** The proceeds of bonds may
4 be used for the purposes described in AS 37.18.030, as appropriate. Bonds may not be
5 issued unless the corporation first finds that the discount rate under AS 43.55.028(m)
6 exceeds the true interest cost to be paid on the bonds by at least 1.5 percent annually.

7 **Sec. 37.18.090. Refunding.** (a) The corporation may refund the bonds or any
8 part of them at or before their maturities or redemption dates by the issuance of
9 refunding bonds of the corporation if, in the opinion of the corporation, refunding is
10 advantageous to and in the best interest of the corporation, the state, and the state's
11 inhabitants.

12 (b) The issuance of refunding bonds need not be authorized by the legislature
13 or ratified by qualified voters of the state, as required by art. IX, sec. 8, Constitution of
14 the State of Alaska. The corporation shall adopt the resolution or resolutions and
15 prepare all other documents and proceedings necessary for the issuance, exchange or
16 sale, and delivery of the refunding bonds. All provisions of this chapter are applicable
17 to the refunding bonds and to the issuance, sale, or exchange of them, except as
18 otherwise provided in this section.

19 (c) Refunding bonds may be issued in a principal amount sufficient to provide
20 money for the advance or current refunding of all bonds to be refunded and interest on
21 the refunded bonds and, in addition, for the payment of all costs of issuance and
22 administration of the refunding bonds. Those expenses also include the difference in
23 amount between the par value of the refunding bonds and any amount less than par for
24 which the refunding bonds are sold; the premium, if any, necessary to be paid to call
25 or retire the outstanding bonds and the interest accruing on them to the date of the call
26 or retirement; and other of those costs.

27 (d) The corporation may contract with a refunding trustee to hold the proceeds
28 of refunding bonds in trust until the proceeds, together with earnings on the proceeds,
29 are applied to pay the principal of, premium, if any, and interest on the bonds to be
30 refunded. Until the refunding bond proceeds are applied, the proceeds may be invested
31 in direct obligations of, or obligations guaranteed by, the United States or an agency or

1 corporation of the United States whose obligations constitute direct obligations of, or
2 obligations guaranteed by, the United States, or other obligations specified in a bond
3 resolution.

4 (e) The corporation is authorized to incur expenses to carry out this section.

5 **Sec. 37.18.100. Bonds as legal investments.** The bonds are legal investments
6 for all banks, trust companies, savings banks, savings and loan associations, and other
7 persons carrying on a banking business, all insurance companies and other persons
8 carrying on an insurance business, and all executors, administrators, trustees, and other
9 fiduciaries. The bonds may be accepted as security for deposits of all money of the
10 state and its political subdivisions.

11 **Sec. 37.18.110. Limitation on judicial action.** A person may not bring a
12 judicial action to contest the constitutionality or validity of this chapter or the
13 constitutionality or validity of a bond issued and sold under this chapter unless the
14 action is commenced in a court of the state of competent jurisdiction within 45 days
15 after the corporation adopts a resolution under AS 37.18.060 authorizing the issuance
16 of bonds. A person that fails to commence an action in the time provided under this
17 section is barred from commencing an action to contest the constitutionality or validity
18 of a bond issued and sold under this chapter.

19 **Sec. 37.18.170. Statutory construction.** This chapter shall be liberally
20 construed to carry out the purposes for which it was enacted.

21 **Sec. 37.18.180. Regulations.** The corporation may adopt regulations necessary
22 to implement the provisions of this chapter.

23 **Sec. 37.18.190. Definitions.** In this chapter,

24 (1) "bond resolution" means the resolution or resolutions adopted by
25 the corporation under AS 37.18.060 authorizing the issuance of bonds;

26 (2) "bonds" means the bonds authorized in this chapter;

27 (3) "corporation" means the Alaska Tax Credit Certificate Bond
28 Corporation created in AS 37.18.010;

29 (4) "costs of issuance and administration" means all costs associated
30 with issuance and administration of bonds and refunding bonds, including costs of
31 bond printing, official statements, financial advisors, travel costs, rating agencies,

bond insurance, letters and lines of credit for credit enhancement, underwriters, remarketing agents, legal services, paying agents, bonds registrars, bond and escrow trustees, arbitrage rebate, administrative costs, both direct and indirect, and all other costs;

(5) "reserve fund" means the Alaska Tax Credit Certificate Bond Corporation reserve fund established in AS 37.18.040.

* **Sec. 3.** AS 43.20.046(e) is amended to read:

(e) Subject to the requirements in **AS 43.55.028** [AS 43.55.028(j)], the department may use **either** available money in the oil and gas tax credit fund established in AS 43.55.028 **or, subject to appropriation by the legislature, money disbursed to the commissioner for refunds under AS 43.55.028 from the Alaska Tax Credit Certificate Bond Corporation reserve fund established in AS 37.18.040, or both,** to make the refund applied for under (d) of this section in whole or in part if the department finds that, after application of all available tax credits, the claimant's total tax liability under this chapter for the calendar year in which the claim is made is zero.

* **Sec. 4.** AS 43.20.047(e) is amended to read:

(e) Subject to the requirements in **AS 43.55.028** [AS 43.55.028(j)], the department may use **either** money available in the oil and gas tax credit fund established in AS 43.55.028 **or, subject to appropriation by the legislature, money disbursed to the commissioner for refunds and payments under AS 43.55.028 from the Alaska Tax Credit Certificate Bond Corporation reserve fund established in AS 37.18.040, or both,** to make a refund or payment under (d) of this section in whole or in part if the department finds that, after application of all available tax credits, the claimant's total tax liability under this chapter for the calendar year in which the claim is made is zero.

* **Sec. 5.** AS 43.20.053(e) is amended to read:

(e) Subject to the requirements in **AS 43.55.028** [AS 43.55.028(j)], the department may use **either** money available in the oil and gas tax credit fund established in AS 43.55.028 **or, subject to appropriation by the legislature, money disbursed to the commissioner for refunds and payments under AS 43.55.028**

1 from the Alaska Tax Credit Certificate Bond Corporation reserve fund
2 established in AS 37.18.040, or both, to make a refund or payment under (d) of this
3 section in whole or in part if the department finds that, after application of all available
4 tax credits, the claimant's total tax liability under this chapter for the calendar year in
5 which the claim is made is zero.

6 * **Sec. 6.** AS 43.55.028(b) is amended to read:

7 (b) The oil and gas tax credit fund consists of

8 (1) money appropriated to the fund, including any appropriation of the
9 percentage provided under (c) of this section of all revenue from taxes levied by
10 AS 43.55.011 that is not required to be deposited in the constitutional budget reserve
11 fund established in art. IX, sec. 17(a), Constitution of the State of Alaska, less the
12 amount described in (r) of this section; and

13 (2) earnings on the fund.

14 * **Sec. 7.** AS 43.55.028(e) is amended to read:

15 (e) The department, on the written application of a person to whom a
16 transferable tax credit certificate has been issued under AS 43.55.023(d) or former
17 AS 43.55.023(m) for an expenditure incurred before July 1, 2017, or to whom a
18 production tax credit certificate has been issued under AS 43.55.025(f) for an
19 expenditure incurred before July 1, 2017, may use either available money in the oil
20 and gas tax credit fund or, subject to appropriation by the legislature, money
21 disbursed to the commissioner, or both, to purchase, in whole or in part, the
22 certificate. The department may not purchase with money from the oil and gas tax
23 credit fund a total of more than \$70,000,000 in tax credit certificates from a person in
24 a calendar year. The total amount of purchases made by the department with
25 money from the oil and gas tax credit fund from a person in a year may not
26 exceed the assumed payment amount for each year, as calculated under (l) of this
27 section without the discount provided in (m) of this section. Before purchasing a
28 certificate or part of a certificate, the department shall find that

29 (1) the calendar year of the purchase is not earlier than the first
30 calendar year for which the credit shown on the certificate would otherwise be allowed
31 to be applied against a tax;

(2) the application is not the result of the division of a single entity into multiple entities that would reasonably be expected to apply as a single entity if the \$70,000,000 limitation in this subsection did not exist;

(3) the applicant's total tax liability under AS 43.55.011(e), after application of all available tax credits, for the calendar year in which the application is made is zero;

(4) the applicant's average daily production of oil and gas taxable under AS 43.55.011(e) during the calendar year preceding the calendar year in which the application is made was not more than 50,000 BTU equivalent barrels; and

(5) the purchase is consistent with this section and regulations adopted under this section.

* **Sec. 8.** AS 43.55.028(g) is amended to read:

(g) The department shall adopt regulations to carry out the purposes of this section, including standards and procedures to allocate available money among applications for purchases under this chapter and claims for refunds and payments under AS 43.20.046, 43.20.047, or 43.20.053 when the total amount of the applications for purchase and claims for refund exceed the amount of available money in the fund. The regulations adopted by the department;

(1) may not, when allocating available money in the fund under this section, distinguish an application for the purchase of a credit certificate issued under former AS 43.55.023(m) or a claim for a refund or payment under AS 43.20.046, 43.20.047, or 43.20.053;

(2) must, when allocating available money in the fund under this section, grant a preference, between two applicants, to the applicant with a higher percentage of resident workers in the applicant's workforce, including workers employed by the applicant's direct contractors, in the state in the previous calendar year; in this paragraph, "resident worker" has the meaning given in AS 43.40.092(b);

(3) must, **for a purchase from money in the fund**, provide for the purchase of the amount equal to the first 50 percent of the credit repurchase limit for each person under (e) of this section at a rate of 100 percent of the value of the certificate or portion of the certificate requested to be purchased and the amount equal

to the next 50 percent of the credit repurchase limit for each person under (e) of this section at a rate of 75 percent of the value of the certificate or portion of the certificate requested to be purchased.

* **Sec. 9.** AS 43.55.028(i) is amended to read:

(i) In this section,

(1) "money disbursed to the commissioner" means money disbursed to the commissioner from the Alaska Tax Credit Certificate Bond Corporation reserve fund established in AS 37.18.040;

(2) "qualified capital expenditure" has the meaning given in AS 43.55.023;

(3) "true interest cost" means the true interest cost of the bonds anticipated to be issued under AS 37.18.

* **Sec. 10.** AS 43.55.028(j) is amended to read:

(j) If an applicant or claimant has an outstanding liability to the state directly related to the applicant's or claimant's oil or gas exploration, development, or production and the department has not previously reduced the amount paid to that applicant or claimant for a certificate or refund because of that outstanding liability, the department may purchase only that portion of a certificate or pay only that portion of a refund that exceeds the outstanding liability, **regardless of whether the purchase is made with money from the fund or money disbursed to the commissioner.** After notifying the applicant or claimant, the department may apply the amount by which the department reduced its purchase of a certificate or payment for a refund because of an outstanding liability to satisfy the outstanding liability. Satisfaction of an outstanding liability under this subsection does not affect the applicant's ability to contest that liability. The department may enter into contracts or agreements with another department to which the outstanding liability is owed. In this subsection, "outstanding liability" means an amount of tax, interest, penalty, fee, rental, royalty, or other charge for which the state has issued a demand for payment that has not been paid when due and, if contested, has not been finally resolved against the state.

* **Sec. 11.** AS 43.55.028 is amended by adding new subsections to read:

(k) The department may negotiate a purchase, refund, or payment under this

1 section to be made from money disbursed to the commissioner. Before making a
2 purchase, refund, or payment, the department shall calculate the maximum amount for
3 a purchase, refund, or payment under (l) of this section. An applicant or claimant that
4 has requested a purchase, refund, or payment by the department from the fund shall
5 provide a notice of interest to the department by the date determined by the
6 commissioner if the applicant or claimant is interested in a purchase, refund, or
7 payment from money disbursed to the commissioner instead. An applicant or claimant
8 that requests a purchase, refund, or payment from the fund on or after July 1, 2018,
9 shall include any notice of interest in a purchase, refund, or payment from money
10 disbursed to the commissioner at the same time that the applicant or claimant requests
11 a purchase, refund, or payment by the department from the fund. The department may
12 not use money disbursed to the commissioner for a purchase, refund, or payment
13 under this section if the applicant or claimant fails to provide the department with a
14 notice of interest in a purchase, refund, or payment from money disbursed to the
15 commissioner. A notice of interest for a purchase, refund, or payment from money
16 disbursed to the commissioner must include all of the requests for purchases, refunds,
17 or payments made by the applicant or claimant and, if applicable, a statement
18 indicating whether the applicant intends to meet a condition in (m)(1) - (3) of this
19 section. An applicant or claimant may not include in a notice of interest a request for
20 purchase, refund, or payment from the fund if the request could have been included in
21 a previous notice of interest under this subsection. The department shall make an offer
22 of purchase, refund, or payment with money disbursed to the commissioner to an
23 applicant or claimant that provides the department with a timely notice of interest. The
24 department shall make an offer of purchase, refund, or payment from money disbursed
25 to the commissioner at a time based on the anticipated schedule for disbursement of
26 money to the commissioner. The applicant or claimant shall notify the department of
27 acceptance of the offer of purchase, refund, or payment within 10 days after the offer
28 is made. An offer of purchase, refund, or payment must be conditioned on the
29 disbursement of money to the commissioner. A transferable tax credit certificate
30 issued under AS 43.55.023, production tax credit certificate issued under
31 AS 43.55.025, or claim for refunds or payments under AS 43.20.046, 43.20.047, or

43.20.053 is not eligible for purchase by the department with money disbursed to the commissioner if the applicant or claimant

(1) fails to provide the department with a notice of interest of an offer of purchase, refund, or payment from money disbursed to the commissioner by the date determined by the commissioner under this subsection; or

(2) declines an offer of purchase, refund, or payment by the department with money disbursed to the commissioner for that transferable tax credit certificate, production tax credit certificate, or refund or claim for payment.

(l) The department shall calculate the maximum amount for a purchase, refund, or payment with money disbursed to the commissioner. The maximum amount for a purchase, refund, or payment is the sum of the assumed payment amounts for purchases, refunds, and payments for each year discounted as provided in (m) of this section. The assumed payment amount for each year is the assumed appropriations to the fund multiplied by the assumed proration amount calculated in this subsection. The assumed appropriation to the fund each year is an amount equal to the percentage provided under (c) of this section of the total taxes levied by AS 43.55.011 as forecast by the department before the application of tax credits. The assumed proration amount is that proportion of payments the department would have allocated from the fund, if money had not been disbursed to the commissioner, based on the date of the request for purchase, refund, or payment from the fund. When determining the assumed proration amount under this subsection, the department shall

(1) allocate requests received in the same year together;

(2) prioritize requests for payments from the earliest to the latest year;

and

(3) assume that no purchases are made with money disbursed to the commissioner.

(m) For purposes of the calculation in (l) of this section, the department shall discount the assumed payment amount each year after the first year by a discount rate. Unless another discount rate in this subsection applies, a discount rate of 10 percent applies to the assumed payment amount for a request for purchase of a transferable tax credit certificate issued under AS 43.55.023 or a production tax credit certificate

issued under AS 43.55.025. An applicant's agreement to a discount rate under (1) - (3) of this subsection is only consideration for the amount that the purchase exceeds the amount that would have been purchased in the absence of the agreement. For a refund or claim for payment under AS 43.20.046, 43.20.047, or 43.20.053, the discount rate is the true interest cost plus 1.5 percent, but may not exceed 10 percent. For a purchase of a transferable tax credit certificate issued under AS 43.55.023 or a production tax credit certificate issued under AS 43.55.025, the discount rate is the true interest cost plus 1.5 percent, but may not exceed 10 percent, in total,

(1) for either a transferable tax credit certificate issued under AS 43.55.023 for which the applicant submitted data required under AS 43.55.025(f)(2) or a production tax credit certificate issued under AS 43.55.025, if the applicant agrees as a condition of the purchase that the 10-year confidentiality period under AS 43.55.025(f)(2)(C)(ii) that would otherwise apply to the seismic data or other geophysical data is waived by the applicant;

(2) if the applicant, or an entity related to the applicant with the applicant's consent, and the Department of Natural Resources agree to an overriding royalty interest agreement under AS 44.37.230; or

(3) if the applicant commits to incur, not later than 24 months after the purchase of the certificate, qualified capital expenditures in an amount greater than or equal to the purchase amount, and

(A) the applicant provides to the department evidence of the commitment and a plan to

(i) use the qualified capital expenditures for the purpose of increasing production of oil or gas from leases or properties in the state; and

(ii) maximize the hiring of state residents and use of state businesses related to qualified capital expenditures;

(B) the applicant agrees in writing that, if the applicant does not incur qualified capital expenditures in an amount greater than or equal to the purchase amount within 24 months after the purchase of the certificate, the applicant shall pay the department the lesser of the difference between the

purchase amount and the

(i) amount the applicant would have been paid had this subsection not applied; or

(ii) actual amount of qualified capital expenditures incurred by the applicant in the 24-month period; and

(C) after reviewing documents submitted under (A) and (B) of this paragraph, the commissioner approves the reduced discount rate for the purchase.

(n) An agreement under (m)(3)(B) of this section may require the applicant to pay the department interest on the amount due under (m)(3)(B) of this section. The interest rate must be consistent with the interest rate provided for a delinquent tax under AS 43.05.225. Payment under (m)(3)(B) of this section and interest under this subsection is waived if the department determines that the applicant could not incur the qualified capital expenditures because of a natural disaster, injunction or other court order, or administrative order.

(o) An applicant or claimant may not use a transferable tax credit certificate issued under AS 43.55.023, production tax credit certificate issued under AS 43.55.025, or refund or claim for payment under AS 43.20.046, 43.20.047, or 43.20.053 purchased by the department with money disbursed to the commissioner against tax liability, even if the purchase, refund, or payment amount was less than the total amount requested for purchase, refund, or payment.

(p) The department shall provide to the Department of Natural Resources the information necessary to evaluate an overriding royalty interest for the purposes of AS 44.37.230.

(q) After bonds are first issued by the Alaska Tax Credit Certificate Bond Corporation established under AS 37.18.010, the legislature may determine the amount of an appropriation under (b)(1) of this section by multiplying the percentage under (c) of this section by the net revenue from taxes levied by AS 43.55.011.

(r) The legislature may reduce an appropriation made under (b)(1) of this section by an amount equal to the amount appropriated to the Alaska Tax Credit Certificate Bond Corporation for maintenance of the required debt service reserve in

1 the Alaska Tax Credit Certificate Bond Corporation reserve fund, as calculated under
2 AS 37.18.040(g).

3 (s) The legislature may, for purposes of making purchases, refunds, and
4 payments under this section, appropriate an amount equal to the amount disbursed to
5 the commissioner by the corporation for purchases, refunds, and payments under this
6 section.

7 * **Sec. 12.** AS 44.37 is amended by adding a new section to read:

8 **Article 4. Tax Credit Certificates and Overriding Royalties.**

9 **Sec. 44.37.230. Duties of the department with respect to purchases of tax**
10 **credit certificates and overriding royalty interest agreements.** (a) The department
11 shall provide necessary information to and consult with the Department of Revenue to
12 determine whether a discount rate is applicable under AS 43.55.028(m).

13 (b) The department may enter into an overriding royalty interest agreement in
14 favor of the state with an applicant that requests a purchase by the Department of
15 Revenue under AS 43.55.028 from money disbursed to the commissioner of revenue
16 from the Alaska Tax Credit Certificate Bond Corporation reserve fund established in
17 AS 37.18.040 of a transferable tax credit certificate issued under AS 43.55.023 or
18 production tax credit certificate issued under AS 43.55.025. The department may enter
19 into an agreement only if the anticipated net present value from the agreement to the
20 state is equal to or greater than the remainder of the value of the tax credit certificate
21 requested for purchase at the proposed reduced discount rate under
22 AS 43.55.028(m)(2), subtracted from the value of the tax credit certificate requested
23 for purchase in the absence of the agreement.

24 (c) An applicant requesting a reduced discount rate under AS 43.55.028(m)(2)
25 shall submit a proposed agreement to the department. The proposed agreement must
26 include

27 (1) a description of the lease or leases in which the applicant holds a
28 working interest that are subject to the proposed agreement;

29 (2) the overriding royalty interest in oil produced from the lease or
30 leases offered to the state under the proposed agreement expressed as a percentage of
31 the total oil produced from the lease or leases; a percentage proposed under this

paragraph may not exceed the working interest of the applicant.

(d) The monthly payment to the state under an agreement is calculated by multiplying the prevailing value of the monthly oil production from the lease or leases subject to the agreement by the product of the total monthly volume of oil production from the lease or leases subject to the agreement and the percent of total oil production offered to the state under the agreement. A deduction may not be applied to a payment calculated under this subsection. The Department of Revenue shall determine and post on its Internet website the prevailing value of the oil under AS 43.55 as provided in regulation.

(e) The amount of an underpayment or overpayment of a monthly payment for a payment in an agreement bears interest in each calendar quarter at the rate of 5.25 percentage points above the annual rate charged to member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter, compounded quarterly as of the last day of that quarter.

(f) When evaluating an agreement, the department shall consider

(1) the anticipated costs to issue and administer a bond under AS 37.18 if the tax credit certificate is purchased at a reduced discount rate under AS 43.55.028(m)(2);

(2) the production or projected production from a lease subject to the proposed agreement;

(3) the value or projected value of the oil produced from a lease subject to the proposed agreement;

(4) the timing for production from a lease subject to the proposed agreement;

(5) the likelihood of production from a lease subject to the proposed agreement;

(6) the existence of and burdens on other interests on a lease subject to the proposed agreement;

(7) cost data or financial information submitted with the proposed agreement; and

(8) other information submitted with the proposed agreement.

(g) The department may request from an applicant additional information necessary to make a determination under (f) of this section. Before an agreement may be entered into, an applicant shall provide the information requested by the department under this subsection.

(h) The department may enter into an agreement necessary to carry out the purpose of this section, including an agreement to maintain the confidentiality of information submitted to the department to evaluate an overriding royalty interest agreement.

(i) The department shall separately account for the revenue collected from an agreement that the department deposits in the general fund. The legislature may appropriate the annual estimated balance in the account to the Alaska tax credit certificate bond corporation reserve fund established under AS 37.18.040.

(j) In this section, unless the context requires otherwise,

(1) "agreement" means an overriding royalty interest agreement described in this section;

(2) "applicant" includes an agent or representative of the applicant; and

(3) "department" means the Department of Natural Resources.

* **Sec. 13.** Sections 2, 5, 8, 10, 31, 37, 40, and 43, ch. 3, SSSLA 2017, are repealed.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

NOTICE TO REVISOR OF STATUTES. (a) The commissioner of revenue shall notify the revisor of statutes in writing

(1) if bonds

(A) are not issued under AS 37.18.010 - 37.18.190 by January 1, 2022;

or

(B) are issued under AS 37.18.010 - 37.18.190 before January 1, 2022,

when the principal amounts of the bonds issued under AS 37.18.010 - 37.18.190, together with the interest on them and any interest owing on unpaid installments of interest, and all other obligations with respect to the bonds, have been fully met and discharged; and

(2) when

(A) there are no outstanding applications for purchase of tax credit certificates or claims for refunds or payments for which payment has not been made under AS 43.55.028(e); and

(B) it has been at least one year since a person has applied for a purchase, refund, or payment under AS 43.55.028.

(b) In this section,

(1) "claim for refund or payment" means a refund or payment claimed under AS 43.20.046, 43.20.047, or 43.20.053 subject to payment under AS 43.55.028;

(2) "tax credit certificate" means a transferable tax credit certificate issued under AS 43.55.023 or a production tax credit certificate issued under AS 43.55.025 subject to purchase under AS 43.55.028.

* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: RETROACTIVITY OF REGULATIONS. Notwithstanding any contrary provision of AS 44.62.240, if the

(1) Department of Revenue expressly designates in a regulation that the regulation applies retroactively, a regulation adopted by the Department of Revenue to implement, interpret, make specific, or otherwise carry out this Act may apply retroactively to the effective date of the law implemented by the regulation;

(2) Department of Natural Resources expressly designates in a regulation that the regulation applies retroactively, a regulation adopted by the Department of Natural Resources to implement, interpret, make specific, or otherwise carry out this Act may apply retroactively to the effective date of the law implemented by the regulation.

* **Sec. 16.** Section 46, ch. 3, SSSLA 2017, is repealed.

* **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).