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Bullock
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CS FOR SENATE BILL NO. 153()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS THOMAS, Coghill

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a gas storage facility; relating to the tax credit for a gas storage**
2 **facility and the expansion of a gas storage facility; relating to the powers and duties of**
3 **the Alaska Oil and Gas Conservation Commission; relating to the regulation of natural**
4 **gas storage as a utility; relating to the powers and duties of the director of the division of**
5 **lands and to lease fees for a gas storage facility on state land; and providing for an**
6 **effective date."**

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

8 *** Section 1.** AS 31.05.032(b) is amended to read:

9 (b) Within six months after receiving an application under (a) of this section,
10 the commission shall determine and certify

11 (1) the working gas storage capacity of the facility on the date the
12 facility commences commercial operation or the increase in working gas storage
13 capacity established after December 31, 2010, for a gas storage facility that was in

operation before January 1, 2011, on the date the increased capacity commences commercial operation, rounded to the nearest

(A) 500,000,000 cubic feet for nontank storage; or

(B) 1,000,000 gallons for tank storage;

(2) whether the gas storage facility is capable of withdrawing a minimum of 10,000,000 cubic feet of gas a day; and

(3) that the facility qualifies as a gas storage facility for the purposes of this section.

* **Sec. 2.** AS 38.05 is amended by adding a new section to read:

Sec. 38.05.096. Exemption from rental payments on land leased for certain gas storage facilities. (a) A person leasing state land for a gas storage facility other than a gas storage facility subject to AS 38.05.180(u) may request an exemption from lease payments as provided in this section. The exemption is applicable for the periods described in (b) of this section.

(b) The exemption is available for the calendar year in which the gas storage facility commences commercial operation and for each of the nine calendar years immediately following the first year of commercial operation. However, an exemption is not applicable for the calendar year after the facility ceases commercial operation or for any subsequent calendar year.

(c) The lessee shall provide the director with any information the director requests to determine whether the lessee qualifies for the exemption.

(d) Information related to state land leased for a gas storage facility qualifying for the exemption in this section is public information and may be furnished to the Regulatory Commission of Alaska. On request, the director shall provide the name of each person using state land leased for a gas storage facility, the years for which an exemption was granted, and the amount of the exemption.

(e) A person receiving an exemption for a payment under this section that contracts to store gas for a utility regulated under AS 42.05 shall reduce the storage price to reflect the value of the exemption.

(f) In this section, "ceases commercial operation," "commences commercial operation," and "gas storage facility" have the meanings given in AS 31.05.032.

1 * **Sec. 3.** AS 42.05.990(3) is amended to read:

2 (3) "natural gas storage facility" means a facility that receives natural
3 gas volumes from customers, holds the gas volumes in a reservoir, **tank, or depleted**
4 **or nearly depleted pool,** and delivers the gas volumes to the customer; in this
5 paragraph, "facility" includes

6 (A) all parts of the facility from the point at which the natural
7 gas volumes are received by the facility from the customer to the point at
8 which the natural gas volumes are delivered by the facility to the customer;
9 **and**

10 (B) [A FACILITY CONSISTING OF A RESERVOIR,
11 EITHER UNDERGROUND OR ABOVEGROUND, AND] one or more of the
12 following components of the facility:

- 13 (i) pipe;
14 (ii) compressor stations;
15 (iii) station equipment;
16 (iv) injection and extraction wells;
17 (v) on-site or remote monitoring, supervision, and
18 control facilities;
19 (vi) gas processing plants and gas treatment plants, but
20 not including a liquefied natural gas or manufacturing plant or facility;
21 (vii) other equipment necessary to receive, place into
22 **storage** [THE RESERVOIR], monitor, remove from **storage** [THE
23 RESERVOIR, PROCESS], and deliver natural gas;

24 * **Sec. 4.** AS 43.20.046(a) is amended to read:

25 (a) **Except as provided in (m) of this section, a** [A] person that is an owner
26 of a gas storage facility described in (b) of this section that commences commercial
27 operation after December 31, 2010, and before January 1, 2016, may apply a
28 refundable credit against a tax liability that may be imposed on the person under this
29 chapter for the taxable year in which the gas storage facility commences commercial
30 operation. **A tax credit under this section is in addition to any other credit under**
31 **this chapter for which the person is eligible.** The tax credit under this section **for a**

(1) nontank storage facility shall be an amount equal to \$1.50 for each 1,000 cubic feet of working gas storage capacity that is certified under AS 31.05.032 less any amount of credit received under this section taken in earlier tax years for that capacity; ~~the~~ [. THE] total amount of the credit that may be received for a single nontank [GAS] storage facility under this section may not exceed the lesser of \$15,000,000 or 25 percent of the costs incurred to establish the gas storage facility;

(2) tank storage facility shall be the lesser of \$15,000,000 or 50 percent of the cost incurred to establish the tank storage facility [. THE TAX CREDIT IN THIS SECTION IS IN ADDITION TO ANY OTHER CREDIT UNDER THIS CHAPTER FOR WHICH THE PERSON IS ELIGIBLE].

* Sec. 5. AS 43.20.046(b) is amended to read:

(b) A gas storage facility qualifying for the credit in this section

(1) must have a working gas storage capacity of at least

(A) 500,000,000 cubic feet of gas other than cushion gas for nontank storage; or

(B) 1,000,000 gallons for tank storage;

(2) must have a minimum withdrawal capability of 10,000,000 cubic feet a day as certified by the Alaska Oil and Gas Conservation Commission under AS 31.05.032;

(3) may not have been in operation as a gas storage facility before January 1, 2011, unless the credit is based on the expansion of a gas storage facility under (m) of this section;

(4) must be regulated under AS 42.05 as a utility and be available to furnish the service of natural gas storage to the public for compensation; in this paragraph, "service of natural gas storage" has the meaning given in AS 42.05.990; and

(5) if located on state land and leased or subject to a lease under AS 38 [AS 38.05.180], must be in compliance with the terms of the lease.

* Sec. 6. AS 43.20.046(d) is amended to read:

(d) A person entitled to a tax credit under this section that is greater than the person's tax liability under this chapter may request a refund or payment in the

amount of the unused portion of the tax credit.

* **Sec. 7.** AS 43.20.046(e) is amended to read:

(e) The department may use available money in the oil and gas tax credit fund established in AS 43.55.028 to make the refund or payment applied for under (d) of this section in whole or in part if the department finds that (1) the claimant does not have an outstanding liability to the state for unpaid delinquent taxes under this title; and (2) 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. In this subsection, "unpaid delinquent tax" means an amount of tax for which the department has issued an assessment that has not been paid and, if contested, has not been finally resolved in the taxpayer's favor.

* **Sec. 8.** AS 43.20.046(h) is amended to read:

(h) If the gas storage facility or the expanded portion of the gas storage facility for which a credit was received under this section ceases commercial operation during the nine calendar years immediately following the calendar year in which the gas storage facility or the expanded portion of the gas storage facility commences commercial operation, the tax liability under this chapter of the person who claimed the credit shall be increased, and a person not subject to the tax under this chapter that received a payment under (d) of this section shall be liable to the state in the amount determined in this subsection. The amount of the increase in tax liability or liability to the state

(1) for a person subject to the tax under this chapter, shall be determined and assessed for the taxable year in which the gas storage facility ceases commercial operation, regardless of whether the gas storage facility subsequently resumes commercial operation; [AND]

(2) for a person not subject to the tax due under this chapter, shall be determined and assessed as of December 31 of the calendar year in which the gas storage facility or the expanded portion of the gas storage facility ceases commercial operation, regardless of whether the gas storage facility or the expanded portion of the gas storage facility subsequently resumes commercial operation; and

(3) is equal to the total amount of the credit taken or received as a payment under (d) of this section, as applicable, multiplied by a fraction, the numerator of which is the difference between 10 and the number of calendar years for which the gas storage facility or the expanded portion of the gas storage facility was eligible for a tax credit under this section and the denominator of which is 10.

* **Sec. 9.** AS 43.20.046(i) is amended to read:

(i) The issuance of a refund or payment under this section does not limit the department's ability to later audit or adjust the claim if the department determines, as a result of the audit, that the person that claimed the credit was not entitled to the amount of the credit. The tax liability of the person receiving the credit under this chapter and that is subject to the tax imposed under this chapter is increased by the amount of the credit that exceeds that to which the person was entitled; a person that receives the credit and that is not subject to the tax imposed under this chapter is liable to the state for the amount of the credit that exceeds that to which the person was entitled. If the tax liability is increased or a person not subject to the tax imposed under this chapter is liable to the state under this subsection, the increase in tax liability or the liability to the state bears interest under AS 43.05.225 from the date the refund or payment was issued.

* **Sec. 10.** AS 43.20.046(j) is amended to read:

(j) A person taking a tax credit under this section or receiving a payment under (d) of [CLAIMING A TAX CREDIT UNDER] this section for a gas storage facility or expanded portion of a gas storage facility that ceases commercial operation within nine calendar years immediately following the calendar year in which the gas storage facility or expanded portion of the gas storage facility commences commercial operation shall notify the department in writing of the date the gas storage facility or expanded portion of the gas storage facility ceased commercial operation. The notice must be filed with the return for the taxable year in which the gas storage facility ceases commercial operation.

* **Sec. 11.** AS 43.20.046(k) is amended to read:

(k) A refund or payment under this section does not bear interest.

* **Sec. 12.** AS 43.20.046 is amended by adding new subsections to read:

(m) Notwithstanding (a) of this section, a person that is an owner of a gas storage facility that commenced commercial operation before January 1, 2011, that expanded the gas storage facility after December 31, 2010, and that commences commercial operations after December 31, 2010, and before January 1, 2016, in the expanded portion of the gas storage facility may apply a refundable credit against a tax liability that may be imposed on the person under this chapter for the taxable year in which the expanded portion of the gas storage facility commences commercial operation. The amount of the credit shall be determined under (a)(1) and (2) of this section, but shall be based only on the capacity in the expanded portion of the gas storage facility and cost incurred to expand the gas storage facility after December 31, 2010.

(n) In this section, "expanded portion of the gas storage facility" means the increase in capacity after December 31, 2010, of a gas storage facility that commenced commercial operations before January 1, 2011.

* **Sec. 13.** AS 43.55.028(a) is amended to read:

(a) The oil and gas tax credit fund is established as a separate fund of the state. The purpose of the fund is to purchase transferable tax credit certificates issued under AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to pay refunds and payments claimed under AS 43.20.046.

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

(g) The department may 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 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 may not, when allocating available money in the fund under this section, distinguish an application for the purchase of a credit certificate issued under AS 43.55.023(m) or a claim for refund under AS 43.20.046.

* **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).