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Bullock
2/20/12

CS FOR HOUSE BILL NO. 289()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE THOMPSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a an above-ground liquefied natural gas storage facility; relating to**
2 **the tax credit for an investment in an above-ground liquefied natural gas storage**
3 **facility; relating to the regulation of gas storage as a utility; relating to the powers and**
4 **duties of the director of the division of lands and to lease fees for a liquefied natural gas**
5 **storage facility on state land; and providing for an effective date."**

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

7 *** Section 1.** AS 38.05 is amended by adding a new section to read:

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

13 (b) The exemption is available for the calendar year in which the liquefied

1 natural gas storage facility commences commercial operation and for each of the nine
2 calendar years immediately following the first year of commercial operation.
3 However, an exemption is not applicable for the calendar year after the facility ceases
4 commercial operation or for any subsequent calendar year.

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

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

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

16 (f) In this section,

17 (1) "ceases commercial operation" and "commences commercial
18 operation" have the meanings given in AS 31.05.032;

19 (2) "liquefied natural gas storage facility" means a tank that is
20 available for the storage of liquefied natural gas.

21 * Sec. 2. AS 42.05.990(3) is amended to read:

22 (3) "natural gas storage facility" means a facility that receives natural
23 gas volumes either as gas or liquefied natural gas from customers, holds the gas
24 volumes in a reservoir, tank, depleted or nearly depleted pool, or other above-
25 ground containment structure, and delivers the gas volumes to the customer; in this
26 paragraph, "facility" includes

27 (A) all parts of the facility from the point at which the natural
28 gas volumes are received by the facility from the customer to the point at
29 which the natural gas volumes are delivered by the facility to the customer;
30 and

31 (B) [A FACILITY CONSISTING OF A RESERVOIR,

1 EITHER UNDERGROUND OR ABOVEGROUND, AND] one or more of the
2 following components of the facility:

- 3 (i) pipe;
4 (ii) compressor stations;
5 (iii) station equipment;
6 (iv) injection and extraction wells;
7 (v) on-site or remote monitoring, supervision, and
8 control facilities;
9 (vi) gas processing plants and gas treatment plants, but
10 not including a liquefied natural gas or manufacturing plant or facility;
11 (vii) other equipment necessary to receive, place into
12 storage [THE RESERVOIR], monitor, remove from storage [THE
13 RESERVOIR], process, and deliver natural gas;

14 * **Sec. 3.** AS 43.20 is amended by adding a new section to article 1 to read:

15 **Sec. 43.20.047. Above-ground liquefied natural gas storage facility tax**
16 **credit.** (a) A person that is an owner of an above-ground liquefied natural gas storage
17 facility described in (b) of this section that commences commercial operation before
18 January 1, 2020, may apply a refundable credit against a tax liability that may be
19 imposed on the person under this chapter or receive the amount of the credit in the
20 form of a payment for the taxable year in which the liquefied natural gas storage
21 facility commences commercial operation. The tax credit or payment under this
22 section may not exceed the lesser of \$15,000,000 or 50 percent of the costs incurred to
23 establish or expand the above-ground liquefied natural gas storage facility. The tax
24 credit in this section is in addition to any other credit under this chapter for which the
25 person is eligible.

26 (b) To qualify for the credit in this section, an above-ground liquefied natural
27 gas storage facility

28 (1) must have a liquefied natural gas storage volume of not less than
29 1,000,000 gallons of liquefied natural gas, or, if the credit is claimed for an expansion,
30 the expansion must have increased the capacity of an existing above-ground liquefied
31 natural gas storage facility by more than 1,000,000 gallons;

1 (2) may not have been in operation as an above-ground liquefied
2 natural gas storage facility before January 1, 2011, unless the tax credit in this section
3 is based on the expansion of the above-ground liquefied natural gas storage facility
4 after December 31, 2011;

5 (3) must be regulated under AS 42.05 as a utility and be available to
6 furnish the service of natural gas storage to customers, utilities, or industrial facilities;
7 in this paragraph, "service of natural gas storage" has the meaning given in
8 AS 42.05.990, except that, in this paragraph, the natural gas storage is limited to the
9 service of liquefied natural gas storage;

10 (4) if located on state land and leased or subject to a lease under
11 AS 38.05, must be in compliance with the terms of the lease; and

12 (5) must have commenced commercial operation on or before the date
13 the person takes a credit under (a) of this section or applies for a payment under (a) of
14 this section.

15 (c) To claim the credit or request a payment, a person shall submit to the
16 department a certification of the capacity of the above-ground liquefied natural gas
17 storage facility measured in gallons or the capacity of an expansion to an existing
18 above-ground liquefied natural gas storage facility measured in gallons, the date that
19 the liquefied natural gas storage facility commenced commercial operation, the date
20 that any expansion to the facility commenced commercial operation, and other
21 information required by the department.

22 (d) A person applying the credit under this section against a liability under this
23 chapter shall claim the credit on the person's return. A person entitled to a tax credit
24 under this section that is greater than the person's tax liability under this chapter may
25 request a refund or payment in the amount of the unused portion of the tax credit.

26 (e) The department may use money available in the oil and gas tax credit fund
27 established in AS 43.55.028 to make a refund or payment under (d) of this section in
28 whole or in part if the department finds that (1) the claimant does not have an
29 outstanding liability to the state for unpaid delinquent taxes under this title; and (2)
30 after application of all available tax credits, the claimant's total tax liability under this
31 chapter for the calendar year in which the claim is made is zero. In this subsection,

1 "unpaid delinquent tax" means an amount of tax for which the department has issued
2 an assessment that has not been paid and, if contested, has not been finally resolved in
3 the taxpayer's favor.

4 (f) For the purpose of determining the amount of the credit under this section,
5 the costs incurred to establish an above-ground liquefied natural gas storage facility or
6 to expand an above-ground liquefied natural gas storage facility shall be submitted to
7 the department with verification by an independent certified public accountant,
8 licensed in the state. The volume of working liquefied natural gas storage or volume of
9 the expansion to an existing above-ground liquefied natural gas storage facility shall
10 be verified by a professional engineer licensed in the state with relevant experience.

11 (g) A person may not receive a credit under this section for the acquisition of
12 an above-ground liquefied natural gas storage facility for which a credit has been
13 taken under this section.

14 (h) If the above-ground liquefied natural gas storage facility for which a credit
15 was received under this section ceases commercial operation during the nine calendar
16 years immediately following the calendar year in which the liquefied natural gas
17 storage facility commences commercial operation, the tax liability under this chapter
18 of the person who claimed the credit shall be increased, and a person not subject to the
19 tax under this chapter that received a payment under (d) and (e) of this section shall be
20 liable to the state in the amount determined in this subsection. The amount of the
21 increase in tax liability or liability to the state

22 (1) for a person subject to the tax under this chapter, shall be
23 determined and assessed for the taxable year in which the liquefied natural gas storage
24 facility ceases commercial operation, regardless of whether the liquefied natural gas
25 storage facility subsequently resumes commercial operation;

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

30 (3) is equal to the total amount of the credit taken or received as a
31 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 liquefied natural gas storage facility was eligible for a tax credit under this section and the denominator of which is 10.

(i) The issuance of a refund 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 is increased by the amount of the credit that exceeds that to which the person was entitled. If the tax liability is increased under this subsection, the increase bears interest at the rate set by AS 43.05.225 from the date the refund was issued.

(j) A person claiming a tax credit under this section for a liquefied natural gas storage facility that ceases commercial operation within nine calendar years immediately following the calendar year in which the liquefied natural gas storage facility commences commercial operation shall notify the department in writing of the date the liquefied natural gas storage facility ceased commercial operation. The notice must be filed with the return for the taxable year in which the liquefied natural gas storage facility ceases commercial operation.

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

(l) In this section,

(1) "liquefied natural gas storage facility" means a gas storage facility in which liquefied natural gas is stored in a tank or other above-ground containment structure;

(2) "ceases commercial operation" means that the above-ground liquefied natural gas storage facility fails to add or withdraw 20 percent or more of its working capacity of liquefied natural gas during a calendar year after the calendar year in which the above-ground liquefied natural gas storage facility commences commercial operation;

(3) "commences commercial operation" means the first input of liquefied natural gas into a liquefied natural gas storage facility for purposes other than testing.

* **Sec. 4.** AS 43.55.028(a) is amended to read:

1 (a) The oil and gas tax credit fund is established as a separate fund of the state.
2 The purpose of the fund is to purchase transferable tax credit certificates issued under
3 AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to
4 pay refunds and payments claimed under AS 43.20.046 or 43.20.047.

5 * **Sec. 5.** AS 43.55.028(g) is amended to read:

6 (g) The department may adopt regulations to carry out the purposes of this
7 section, including standards and procedures to allocate available money among
8 applications for purchases under this chapter and claims for refunds and payments
9 under AS 43.20.046 or 43.20.047 when the total amount of the applications for
10 purchase and claims for refund exceed the amount of available money in the fund. The
11 regulations adopted by the department may not, when allocating available money in
12 the fund under this section, distinguish an application for the purchase of a credit
13 certificate issued under AS 43.55.023(m) or a claim for refund under AS 43.20.046 or
14 AS 43.20.047.

15 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).