

HOUSE BILL NO. 289

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE THOMPSON

Introduced: 1/17/12

Referred: Resources, Finance

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; relating to the powers and duties of the Alaska Oil and Gas Conservation**
3 **Commission; relating to the regulation of natural gas storage as a utility; relating to the**
4 **powers and duties of the director of the division of lands and to lease fees for a 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 31.05.032(b) is amended to read:

8 (b) Within six months after receiving an application under (a) of this section,
9 the commission shall determine and certify
10 (1) the working gas storage capacity of the facility on the date the facility
11 commences commercial operation rounded to the nearest
12 (A) 500,000,000 cubic feet for nontank storage; or
13 (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.

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

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

1 paragraph, "facility" includes

2 (A) all parts of the facility from the point at which the natural
 3 gas volumes are received by the facility from the customer to the point at
 4 which the natural gas volumes are delivered by the facility to the customer;
 5 **and**

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

9 (i) pipe;
 10 (ii) compressor stations;
 11 (iii) station equipment;
 12 (iv) injection and extraction wells;
 13 (v) on-site or remote monitoring, supervision, and
 14 control facilities;

15 (vi) gas processing plants and gas treatment plants, but
 16 not including a liquefied natural gas or manufacturing plant or facility;

17 (vii) other equipment necessary to receive, place into
 18 **storage** [THE RESERVOIR], monitor, remove from **storage** [THE
 19 RESERVOIR, PROCESS], and deliver natural gas;

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

21 (a) A person that is an owner of a gas storage facility described in (b) of this
 22 section that commences commercial operation after December 31, 2010, and before
 23 January 1, 2016, may apply a [REFUNDABLE] credit against a tax liability that may
 24 be imposed on the person under this chapter for the taxable year in which the gas
 25 storage facility commences commercial operation. The tax credit under this section
 26 shall be an amount equal to \$1.50 for each 1,000 cubic feet of working gas storage
 27 capacity that is certified under AS 31.05.032 less any amount of credit received under
 28 this section taken in earlier tax years for that capacity. The total amount of the credit
 29 that may be received for a single gas storage facility under this section may not exceed
 30 [THE LESSER OF] \$15,000,000 [OR 25 PERCENT OF THE COSTS INCURRED
 31 TO ESTABLISH THE GAS 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 per hour and be certified by the Alaska Oil and Gas Conservation Commission under 7 AAC 13.550;

(3) may not have been in operation as a gas storage facility before January 1, 2011;

(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

1 resolved in the taxpayer's favor.

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

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

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

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

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

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

24 (i) The issuance of a refund or payment under this section does not limit the
 25 department's ability to later audit or adjust the claim if the department determines, as a
 26 result of the audit, that the person that claimed the credit was not entitled to the
 27 amount of the credit. The tax liability of the person receiving the credit under this
 28 chapter and that is subject to the tax imposed under this chapter is increased by
 29 the amount of the credit that exceeds that to which the person was entitled; a person
 30 that receives the credit and that is not subject to the tax imposed under this
 31 chapter is liable to the state for the amount of the credit that exceeds that to

1 **which the person was entitled**. If the tax liability is increased **or a person not**
 2 **subject to the tax imposed under this chapter is liable to the state** under this
 3 subsection, the increase **in tax liability or the liability to the state** bears interest
 4 under AS 43.05.225 from the date the refund **or payment** was issued.

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

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

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

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

15 * **Sec. 12.** AS 43.55.028(a) is amended to read:

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

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

21 (g) The department may adopt regulations to carry out the purposes of this
 22 section, including standards and procedures to allocate available money among
 23 applications for purchases under this chapter and claims for refunds **and payments**
 24 under AS 43.20.046 when the total amount of the applications for purchase and claims
 25 for refund exceed the amount of available money in the fund. The regulations adopted
 26 by the department may not, when allocating available money in the fund under this
 27 section, distinguish an application for the purchase of a credit certificate issued under
 28 AS 43.55.023(m) or a claim for refund under AS 43.20.046.

29 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).