

ALASKA STATE LEGISLATURE

Session

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Co-Chair

Senate Resources Committee

Chair

Senate Special Committee on Energy
Senate Special Committee on World Trade,
Technology & Innovation

Member

Senate Judiciary Committee
Joint Armed Services Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 31: Alternative Energy Production Tax Credit

SB 31 encourages the development of Alaska's vast renewable energy resources by offering power producers and utilities a valuable production tax credit for each kilowatt-hour of electricity they produce from geothermal, wind, hydro, tidal, wave, biomass, in-river, or solar energy.

In its simplest terms, a tax credit is a direct reduction in the amount of taxes owed. The production tax credit created by SB 31 rewards power producers in the state of Alaska for producing electricity from alternative energy sources by offering to directly reduce the amount of state corporate income tax they owe. In Alaska, the corporate income tax rate is graduated from 1% to 9.4% in increments of \$10,000 of taxable income. The 9.4% maximum rate applies to taxable income of \$90,000 and over.

SB 31 offers a production tax credit in the amount of 2.1 cents per kilowatt-hour (kWh), which matches the rate of the federal Renewable Electricity Production Tax Credit. What this means is that the state will directly reduce the amount of corporate tax owed by 2.1 cents for each kWh of energy produced. By way of example, a 400 kWh plant similar to the Chena Hot Springs Geothermal project, operating at the 75% capacity typical for a geothermal plant, could claim just over \$55,000 in credits per year ($400 \text{ kW} \times \$0.021 \times 8760 \text{ kWh/year} \times 75\% = \$55,188/\text{year}$); a 30 MW project similar to the Fire Island Wind Project, assuming the typical wind farm capacity of 30%, would be eligible for \$1.7 million in credits annually. The credit can only be claimed for each of the first four years after a power plant is placed into service and is capped at 20% of the capital investment of a power project.

However, the dominant model for energy production in Alaska is not the privately owned power producer that pays corporate tax, but rather the publically owned cooperatives and municipal utilities that are tax exempt. To level the playing field and to ensure that all power producers in the state can benefit from the tax credit, SB 31 proposes a transferable tax credit. A transferable tax credit can be sold or traded on an open market to other corporate entities that are required to pay the state corporate income tax.

Because the production tax credit can only be claimed by a power producer that has made a significant investment in infrastructure and is already producing electricity, SB 31 allows a way to incentivize alternative energy development without requiring hefty state appropriations to unproven projects and technologies.

In energy plans across the nation, production incentives are playing an increasingly important role in encouraging the development of renewable energy resources. Twenty-five states offer some sort of renewable energy corporate tax incentive and five states and the federal government offer a production tax credit similar to the one proposed by SB 31.

26-LS0217\N

Kane

3/6/09

CS FOR SENATE BILL NO. 31(ENE)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-SIXTH LEGISLATURE - FIRST SESSION****BY THE SENATE SPECIAL COMMITTEE ON ENERGY****Offered:****Referred:****Sponsor(s): SENATORS MCGUIRE, Ellis, Thomas****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to an alternative energy production tax credit that may be claimed or
2 applied against tax due under the Alaska Net Income Tax Act; and providing for an
3 effective date."

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

5 * **Section 1.** AS 43.20.021(d) is amended to read:

6 (d) Where a credit allowed under the Internal Revenue Code is also allowed in
7 computing Alaska income tax, it is limited to 18 percent for corporations of the
8 amount of credit determined for federal income tax purposes that [WHICH] is
9 attributable to Alaska. This limitation does not apply to a special industrial incentive
10 tax credit under AS 43.20.042 or to an alternative energy production tax credit
11 under AS 43.98.040.

12 * **Sec. 2.** AS 43.98 is amended by adding a new section to read:

13 **Sec. 43.98.040. Alternative energy production tax credit.** (a) An energy
14 producer that produces alternative energy may claim an alternative energy production

1 tax credit in the amount of 2.1 cents for each kilowatt-hour of alternative energy
2 produced or sold for each of the first four tax years after the date the system used to
3 produce alternative energy is placed into service if

4 (1) the alternative energy produced supplies all or part of the energy
5 required by commercial units owned or used by the energy producer; or

6 (2) the energy producer sells all or part of the energy produced.

7 (b) A tax credit under this section may be claimed only for

8 (1) an alternative energy system placed into service on or after
9 January 1, 2010; or

10 (2) an expansion of an alternative energy system if the expansion is
11 made on or after January 1, 2010.

12 (c) An unused tax credit under this section may be carried forward and applied
13 against the tax liability of the energy producer.

14 (d) A tax credit provided under (a) of this section may be sold, assigned,
15 exchanged, conveyed, or otherwise transferred, in whole or in part.

16 (e) A taxpayer acquiring a tax credit under (a) or (d) of this section may use
17 the tax credit or a portion of the tax credit to offset taxes imposed under AS 43.20.011.
18 Any portion of the credit not used may be used at a later time or transferred under (d)
19 of this section. A tax credit under this section may not exceed 20 percent of the energy
20 producer's capital investment for the system used to produce alternative energy.

21 (f) An energy producer that claims a tax credit under this section and that
22 wishes to transfer the unused tax credit to a taxpayer under (d) of this section may
23 apply to the department for a transferable tax credit certificate. An application under
24 this subsection must be in a form prescribed by the department and must include
25 supporting information and documentation that the department reasonably requires.
26 The department shall grant or deny an application, or grant an application as to a lesser
27 amount than that claimed and deny it as to the excess, not later than 120 days after it
28 receives the application.

29 (g) A taxpayer acquiring a tax credit under (a) or (d) of this section may not
30 use the tax credit or a portion of the tax credit to offset taxes imposed by AS 43.20.011
31 in the same year the taxpayer uses a federal alternative energy credit under 26 U.S.C.

45, authorized by AS 43.20.021, to offset taxes imposed by AS 43.20.011.

(h) The department shall

(1) prescribe an application form for a tax credit under this section; and

(2) adopt regulations necessary for the administration of this section.

(i) In this section,

(1) "alternative energy" means geothermal, solar, hydroelectric, wind, biomass, hydrokinetic or tidal, and wave energy;

(2) "energy producer" means an electric utility or independent power producer holding a certificate of public convenience and necessity under AS 42.05.

* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to read:

EXHAUSTION OF UNUSED ALTERNATIVE ENERGY PRODUCTION TAX CREDITS. Notwithstanding the repeal of AS 43.98.040, an unused portion of a tax credit acquired under AS 43.98.040(a) or (d) may be carried forward until exhausted, except that the unused portion of the tax credit may not be carried forward to tax years beginning after December 31, 2028.

* Sec. 4. AS 43.98.040 is repealed January 1, 2025.

* Sec. 5. This Act takes effect January 1, 2010.

CS FOR SENATE BILL NO. 31(ENE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON ENERGY

Offered: 3/2/09

Referred: Resources, Finance

Sponsor(s): SENATORS MCGUIRE, Ellis, Thomas

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to an alternative energy production tax credit that may be claimed or**
2 **applied against tax due under the Alaska Net Income Tax Act; and providing for an**
3 **effective date."**

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

5 * **Section 1.** AS 43.98 is amended by adding a new section to read:

6 **Sec. 43.98.040. Alternative energy production tax credit.** (a) An energy
7 producer that produces alternative energy may claim an alternative energy production
8 tax credit in the amount of 2.1 cents for each kilowatt-hour of alternative energy
9 produced or sold for each of the first four tax years after the date the system used to
10 produce alternative energy is placed into service if

11 (1) the alternative energy produced supplies all or part of the energy
12 required by commercial units owned or used by the energy producer; or

13 (2) the energy producer sells all or part of the energy produced.

14 (b) An unused tax credit under this section may be carried forward and applied

1 against the tax liability of the energy producer.

2 (c) A tax credit provided under (a) of this section may be sold, assigned,
3 exchanged, conveyed, or otherwise transferred, in whole or in part.

4 (d) A taxpayer acquiring a tax credit under (a) or (c) of this section may use
5 the tax credit or a portion of the tax credit to offset taxes imposed under AS 43.20.011.
6 Any portion of the credit not used may be used at a later time or transferred under (c)
7 of this section. A tax credit under this section may not exceed 20 percent of the energy
8 producer's capital investment for the system used to produce alternative energy.

9 (e) An energy producer that claims a tax credit under this section and that
10 wishes to transfer the unused tax credit to a taxpayer under (c) of this section may
11 apply to the department for a transferable tax credit certificate. An application under
12 this subsection must be in a form prescribed by the department and must include
13 supporting information and documentation that the department reasonably requires.
14 The department shall grant or deny an application, or grant an application as to a lesser
15 amount than that claimed and deny it as to the excess, not later than 120 days after it
16 receives the application.

17 (f) A taxpayer acquiring a tax credit under (a) or (c) of this section may not
18 use the tax credit or a portion of the tax credit to offset taxes imposed by AS 43.20.011
19 in the same year the taxpayer uses a federal alternative energy credit under 26 U.S.C.
20 45, authorized by AS 43.20.021, to offset taxes imposed by AS 43.20.011.

21 (g) The department shall

22 (1) prescribe an application form for a tax credit under this section; and

23 (2) adopt regulations necessary for the administration of this section.

24 (h) In this section,

25 (1) "alternative energy" means geothermal, solar, hydroelectric, wind,
26 biomass, hydrokinetic or tidal, and wave energy;

27 (2) "energy producer" means an electric utility holding a certificate of
28 public convenience and necessity under AS 42.05 or an independent power producer.

29 * **Sec. 2.** AS 43.20.021(d) is amended to read:

30 (d) Where a credit allowed under the Internal Revenue Code is also allowed in
31 computing Alaska income tax, it is limited to 18 percent for corporations of the

1 amount of credit determined for federal income tax purposes which is attributable to
2 Alaska. This limitation does not apply to a special industrial incentive tax credit under
3 AS 43.20.042 or to an alternative energy production tax credit under
4 AS 43.98.040.

5 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 EXHAUSTION OF UNUSED ALTERNATIVE ENERGY PRODUCTION TAX
8 CREDITS. Notwithstanding the repeal of AS 43.98.040, an unused portion of a tax credit
9 acquired under AS 43.98.040(a) or (c) may be carried forward until exhausted, except that the
10 unused portion of the tax credit may not be carried forward to tax years beginning after
11 December 31, 2028.

12 * **Sec. 4.** AS 43.98.040 is repealed January 1, 2025.

13 * **Sec. 5.** This Act takes effect January 1, 2010.

SENATE BILL NO. 31

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATORS MCGUIRE, Ellis, Thomas

Introduced: 1/21/09

Referred: Senate Special Committee on Energy, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a geothermal electricity production tax credit under the Alaska Net**
2 **Income Tax Act."**

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

4 * **Section 1.** AS 43.20 is amended by adding a new section to article 1 to read:

5 **Sec. 43.20.046. Geothermal electricity production tax credit.** (a) A taxpayer
6 that owns a commercial geothermal electric energy system capable of producing at
7 least 400 kilowatts of electricity may claim a geothermal electricity production tax
8 credit if

9 (1) the commercial geothermal electric energy system supplies all or
10 part of the energy required by commercial units owned or used by the taxpayer; or

11 (2) the taxpayer sells all or part of the energy produced by the
12 commercial geothermal electric energy system as a commercial enterprise.

13 (b) A taxpayer may claim a tax credit under this section in the amount of 35
14 cents for each kilowatt-hour of geothermal electricity produced or sold. A tax credit

1 may be claimed for each of the first four years after the date the commercial
2 geothermal electric energy system is placed into service.

3 (c) An unused tax credit under this section may be carried forward and applied
4 against the tax liability of the taxpayer for four years after the date the commercial
5 geothermal electric energy system was placed into service.

6 (d) The department shall prepare an application form for a credit under this
7 section.

8 (e) In this section,

9 (1) "commercial geothermal electric energy system" means an active
10 geothermal electricity system capable of producing electricity for use by or sale to a
11 commercial unit or commercial entity;

12 (2) "geothermal electricity" means electricity produced solely from
13 energy contained in heat that continuously flows from below the ground.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:

Bill Version:

CSSB 31 (ENE)

() Publish Date:

Identifier (File Name): CSSB31(ENE)-DOR-TAX-03-02-09

Title **Alternative Energy Production Tax Credit**

Dept. Affected: Revenue 04

RDU **Taxation and Treasury**

Component **Taxation and Treasury**

Sponsor **Senators McGuire, Ellis, Thomas**

Requester **(S) Energy**

Component No. **2476**

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Personal Services	108.9	0.0	108.9	108.9	108.9	108.9	108.9
Travel	2.0	0.0	2.0	2.0	2.0	2.0	2.0
Contractual	34.9	0.0	4.9	4.9	4.9	4.9	4.9
Supplies	0.5	0.0	0.5	0.5	0.5	0.5	0.5
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	146.3	0.0	116.3	116.3	116.3	116.3	116.3
CAPITAL EXPENDITURES	0	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	*	0.0	*	*	*	*	*

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	146.3	0.0	116.3	116.3	116.3	116.3	116.3	116.3
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	146.3	0.0	116.3	116.3	116.3	116.3	116.3	116.3

Estimate of any current year (FY2009) cost:

0

POSITIONS

Full-time	1.00	0	1.00	1.00	1.00	1.00	1.00
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: **Dan Stickel, Economist**

Division **Tax Division**

Approved by:

Agency

Phone (907) 465-3279

Date/Time

Date

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. CSSB 31 (ENE)

ANALYSIS CONTINUATION

Bill Language:

This bill will create a tax credit for electricity production from new alternative energy projects in the state. The amount of the credit will be 2.1 cents for each kilowatt hour of alternative energy produced or sold in "each of the first four years after the date the system used to produce alternative energy is placed into service," up to a limit of 20 percent of capital costs. The tax credit would be applicable only to the Alaska Corporate Net Income Tax. Unused tax credits could be carried forward or transferred.

For purposes of this bill, "alternative energy" means geothermal, solar, hydroelectric, wind, biomass, hydrokinetic or tidal, and wave energy. The credit could be claimed by an "electric utility holding a certificate of public convenience and necessity under AS 42.05 or an independent power producer." The term "independent power producer" would need to be defined in regulation and could potentially include any entity that chooses to implement an eligible alternative energy project.

The effective date of the bill is January 1, 2010. There bill includes a sunset date of January 1, 2025.

Revenues:

Revenues from this bill are indeterminate because we do not know the size or number of projects that would qualify for the credit. According to the US Department of Energy, Alaska currently produces 1.3 billion kilowatt hours of alternative energy annually (hydroelectric, biomass, solar and wind power; there is currently no commercial geothermal electric generation). For each 10 percent increase in alternative energy production, tax revenue to the state would be reduced by \$2.7 million per year for four years.

Some examples of credits generated by possible projects include the following (These examples are for illustrative purposes only. They are based on publicly available information and typical capacity utilization rates):

- A 14-megawatt hydroelectric project such as the Lake Dorothy project near Juneau could be eligible for a \$1.5 million annual credit (assuming the project operates at 60% of capacity). Over four years, this credit would amount to about 9.7% of the estimated \$64 million capital cost.
- A 30-megawatt wind farm such as the Fire Island project near Anchorage could be eligible for a \$1.7 million annual credit (assuming the project operates at 30% of capacity). Over four years, this credit would amount to about 12.3% of the estimated \$54 million capital cost.
- A 1.2-megawatt wind farm such as the Nome wind farm could be eligible for a \$66,000 annual credit (assuming the project operates at 30% of capacity). Over four years, this credit would amount to about 4.8% of the estimated \$5.5 million capital cost.

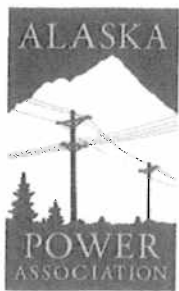
Many smaller projects would likely also qualify for the credit. Based on our analysis of the sample projects listed above, we believe that for most projects, the total credit over four years would amount to less than 20 percent of capital expenditures.

We anticipate that this credit will mostly be used by corporations that acquire the credit through the transferability provision. The transferability provision will be used because many power producers are owned by municipalities, non-profits or S-corporations and therefore are not subject to the corporate income tax. Also, independent power producers, once defined in regulation, could potentially include individuals, sole proprietorships, LLC's, S-corporations, non-profits and other entities that are not subject to the corporate income tax.

Expenditures:

This bill would require the Department of Revenue to administer a new tax credit program, including the review and approval of credit applications and issuance and tracking of credit certificates. This new credit program will likely involve a large number of projects and millions of dollars in credits claimed annually.

The Department is requesting a Corporate Income Tax Auditor III position (Range 22) to audit the tax credits and manage the approval, issuance and tracking of the credits. There will also be \$30,000 in one-time startup expenses: \$20,000 for enhancements to our tax examination system, and \$10,000 for an education and public outreach program.



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February 10, 2009

Senator Lesil McGuire
Chair, Senate Special Committee on Energy

Re: Committee Substitute of SB 31, Alternative Energy Production Tax Credits

Dear Honorable Chair McGuire:

Alaska Power Association (APA) is the statewide trade association for the electric utilities that supply power to more than a half-million Alaskans in communities from Barrow to Unalaska and down the Inside Passage.

APA strongly supports the development of alternative energy projects. State financial assistance and incentives will play a critical role in getting these projects off the drawing board. The Committee Substitute for Senate Bill 31 would help encourage the construction of alternative energy projects through the use of tax credits. It is for these reasons that Alaska Power Association supports the Committee Substitute for Senate Bill 31.

I would like to offer the following suggested changes:

APA suggests defining the time during which a renewable energy producer could claim a credit as 48 months instead of four (4) years. Under the existing bill, if a utility or independent power producer started producing power in August, it could only claim a few months worth of production for that year. By counting months instead of years, the bill would allow for a full four (4) years of production to be claimed over a five-year period. The change could be made by amending subsection (b) to read as follows:

(b) An energy producer may claim a tax credit under this section in the amount of .35 cents for each kilowatt-hour of alternative energy produced or sold. A tax credit may be claimed for each of the first ~~four years~~ **forty-eight months** after the date the system used to produce alternative energy is placed into service.

APA also suggests amending subsection (e) to clarify that it is referring to the credits described in subsection (d). The clarified language would read as follows:

(e) A taxpayer acquiring a ~~transferable~~ tax credit **under (d) of this section** may use the tax credit or a portion of the tax credit to offset taxes imposed under AS 43.20 (Alaska Net Income Tax Act). Any portion of the credit not used may be used at a later time or transferred under (d) of this section.

APA believes that this minor change to section (b) and the clarification to subsection (e) are consistent with the intent behind Committee Substitute for SB 31.

If you have any questions regarding this letter, please contact me at 907-771-5703 or mleland@alaskapower.org. I will be traveling to an out-of-state meeting the day of the first hearing on this bill. As a result, I regret that I will not be able to testify at the hearing.

Thank you for your work on this and other issues of importance to the Alaska electric utility industry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marilyn Leland', with a stylized, cursive script.

Marilyn Leland
Executive Director



Alaska Conservation Alliance

Uniting for Alaska's Future

February 12, 2009

The Honorable Lesil McGuire
Alaska State Senate
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Senator Lesil McGuire,

On behalf of the 40 conservation groups and the 38,000 Alaskans that are represented by the Alaska Conservation Alliance, I am pleased to acknowledge our strong support for SB 31 to establish an Alternative Energy Production Tax Credit. This credit will give Alaskan communities, utilities and entrepreneurs the incentive needed to develop clean, stably priced clean energy sources.

As you are well aware, Alaska is at an energy crossroads. Much of the state's aging electricity generation infrastructure will have to be replaced in the next decade. With power plant life spans of 20 to 100 years, decisions made today about electric power technology will affect generations of Alaskans to come. A decision now to base Alaska's energy infrastructure solely on fossil fuels will result in decades of energy price volatility. Additionally, it is commonly accepted that a carbon cap and trade system to limit the greenhouse gas emissions of fossil fuels, further increasing the costs associated with fossil fuels, will soon likely be implemented. An alternative energy production tax credit gives rural and urban communities incentive to tap a fuel-free, zero-carbon energy source that will stabilize Alaska's future energy costs.

Investing in clean energy production and research can help Alaska become an exporter of clean energy technologies to the world in addition to supplying Alaskans with clean and stably priced energy. Through incentives similar to the Geothermal Tax Credit, Germany built an \$8.7 billion renewable energy industry, creating 170,000 jobs.

The Alaska Conservation Alliance would like to thank you for this opportunity to voice our support for SB 31 and we encourage passage of this bill.

Sincerely,

Kate Troll
Executive Director