

LEGAL SERVICES

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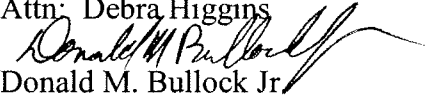
State Capitol
Juneau, Alaska 99801-1182
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MEMORANDUM

February 5, 2010

SUBJECT: Constitutional issues raised CSHB 308()
(Work Order No. 26-LS1328\E)

TO: Representative Craig Johnson
Attn: Debra Higgins

FROM: Donald M. Bullock Jr. 
Legislative Counsel

Enclosed is a draft CSHB 308() that, among other subjects, amends the rate and applicability of interest in AS 43.05.225 and provides a rebate to a taxpayer subject to tax under AS 43.55.011(e) that employs resident workers for 80 percent or more of the labor performed for qualified lease expenditures. Please read this draft carefully to ensure that it is consistent with your intent.

The incentive for the employment of resident workers by a reduction in tax burden raises constitutional issues because of the effect on workers who are not residents of the state.

There are constitutional issues raised by reducing the burden of the oil and gas production tax through a rebate based on resident employment. Providing an incentive for the employment of resident workers corresponds to a disincentive for employing workers who are not residents. This raises a question as to whether the inducement violates the privileges and immunities clause of the United States Constitution or the equal protection provisions in the United States and Alaska Constitutions.

If I may be of further assistance, please advise.

DMB:ljw
10-061.ljw

Enclosure

26-LS1328E
Bullock
2/5/10

CS FOR HOUSE BILL NO. 308()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES JOHNSON, Neuman, Ramras, Millett, Johansen, Hawker

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the duties of the Department of Labor and Workforce Development;**
 2 **relating to the tax rate applicable to the production of oil and gas; relating to a rebate of**
 3 **the production tax on oil and gas based on the employment of resident workers; relating**
 4 **to credits against the oil and gas production tax; relating to the period in which oil and**
 5 **gas production taxes may be assessed; relating to the interest rates applicable on certain**
 6 **amounts due related to various taxes, penalties, payments, and the Alaska Gasline**
 7 **Inducement Act; and providing for an effective date."**

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

9 *** Section 1.** AS 05.15.095(c) is amended to read:

10 (c) A delinquent fee bears interest at the rate set by AS 43.05.225(a)(2)
 11 [AS 43.05.225].

12 *** Sec. 2.** AS 23.05.080 is amended by adding a new subsection to read:

13 (b) In addition to the records that must be kept under (a) of this section, an

1 employer subject to tax under AS 43.55.011(e) and claiming a rebate under
 2 AS 43.55.022 shall keep for each person who provides labor the cost of which is
 3 included in an allowable lease expenditure under AS 43.55.165 an accurate record of
 4 the name, address, and occupation of the person, of the daily and weekly hours worked
 5 by the person, of whether the person is a resident worker, of the total numbers of hours
 6 during a calendar year worked by resident workers, of the total number of hours
 7 during a calendar year worked by persons that are not resident workers, and of the
 8 wages paid each pay period to each person. A record required under this subsection
 9 shall be kept on file for at least three years and may be provided to the Department of
 10 Revenue by request. In this subsection, "resident worker" has the meaning given in
 11 AS 43.40.092.

12 * **Sec. 3.** AS 23.05.100 is amended to read:

13 **Sec. 23.05.100. Inspections and examination of records.** The department
 14 may

15 (1) enter a place of employment during regular hours of employment
 16 and, in cooperation with the employer, or someone designated by the employer, collect

17 (A) facts and statistics relating to the employment of workers;

18 **and**

19 **(B) information required to be kept under AS 23.05.080(b)**
 20 **for the purpose of verifying the eligibility of the employer for a rebate**
 21 **under AS 43.55.022;**

22 (2) make inspections for the proper enforcement of all state labor laws;

23 (3) for the purpose of examination, have access to and copy from any
 24 book, account, record, payroll, paper, or document relating to the employment of
 25 workers.

26 * **Sec. 4.** AS 23.05 is amended by adding a new section to article 1 to read:

27 **Sec. 23.05.135. Definition.** In AS 23.05.010 - 23.05.135, "resident worker"
 28 has the meaning given in AS 43.40.092.

29 * **Sec. 5.** AS 34.45.470(a) is amended to read:

30 (a) A person who fails to pay or deliver property within the time prescribed by
 31 this chapter may be required to pay to the department interest at the annual rate

1 calculated under AS 43.05.225(a)(2) [AS 43.05.225] on the property or the value of it
2 from the date the property should have been paid or delivered.

3 * **Sec. 6.** AS 43.05.225 is amended to read:

4 **Sec. 43.05.225. Interest.** Unless otherwise provided,

5 (1) when a tax levied in this title becomes delinquent, it bears interest
6 in a calendar quarter at the rate of two [FIVE] percentage points above the annual rate
7 charged member banks for advances by the 12th Federal Reserve District as of the
8 first day of that calendar quarter, or at the annual rate of 11 percent, whichever is
9 lower [GREATER], compounded quarterly as of the last day of that quarter;

10 (2) the interest rate is 12 percent a year for

11 (A) delinquent fees payable under AS 05.15.095(c); and

12 (B) [REPEALED

13 (C)] unclaimed property that is not timely paid or delivered, as
14 allowed by AS 34.45.470(a).

15 * **Sec. 7.** AS 43.05.225 is amended by adding a new subsection to read:

16 (b) The unpaid amount of an increase in tax liability that is the direct result of
17 the adoption of a regulation with retroactive application is not considered delinquent
18 for the purposes of (a) of this section until 30 days after the effective date of the
19 regulation with retroactive application.

20 * **Sec. 8.** AS 43.05.280(a) is amended to read:

21 (a) Interest shall be allowed and paid on an overpayment of a tax under this
22 title at the rate and in the manner provided in AS 43.05.225(a)(1) [AS 43.05.225(1)].

23 * **Sec. 9.** AS 43.31.141 is amended to read:

24 **Sec. 43.31.141. When tax due; [,] extension and interest.** The tax imposed
25 by this chapter is due and payable 15 months after the decedent's death and shall be
26 paid by the executor to the department. If the department finds that the payment on the
27 due date of tax or any part of the tax would impose undue hardship upon the estate, the
28 department may extend the time for payment of any part, but no extension may be for
29 more than one year and the aggregate of extensions with respect to an estate may not
30 exceed five years from the due date. In that case, the amount in respect of which the
31 extension is granted shall be paid on or before the date of the expiration of the period

1 of the extension unless a further extension is granted. If the time for the payment is
2 extended, there shall be collected, as part of this amount, interest on the tax as
3 provided in AS 43.05.225(a)(1) [AS 43.05.225(1)] from the due date of the tax to the
4 date the tax is paid.

5 * **Sec. 10.** AS 43.50.570 is amended to read:

6 **Sec. 43.50.570. Interest.** A licensee who fails to pay an amount due for the
7 purchase of stamps within the time required

8 (1) is considered to have failed to pay the cigarette taxes due under this
9 chapter; and

10 (2) shall pay interest at the rate established under AS 43.05.225(a)(1)
11 [AS 43.05.225] from the date on which the amount became due until the date of
12 payment.

13 * **Sec. 11.** AS 43.55.011(g) is amended to read:

14 (g) For each month of the calendar year for which the producer's average
15 monthly production tax value under AS 43.55.160(a)(2) per BTU equivalent barrel of
16 the taxable oil and gas is more than \$30, the amount of tax for purposes of (e)(2) of
17 this section is determined by multiplying the monthly production tax value of the
18 taxable oil and gas produced during the month by the tax rate calculated as follows:

19 (1) if the producer's average monthly production tax value per BTU
20 equivalent barrel of the taxable oil and gas for the month is not more than \$155
21 [\$92.50], the tax rate is 0.2 [0.4] percent multiplied by the number that represents the
22 difference between that average monthly production tax value per BTU equivalent
23 barrel and \$30; or

24 (2) if the producer's average monthly production tax value per BTU
25 equivalent barrel of the taxable oil and gas for the month is more than \$155 [\$92.50],
26 the tax rate is the sum of 25 percent and the product of 0.1 percent multiplied by the
27 number that represents the difference between the average monthly production tax
28 value per BTU equivalent barrel and \$155 [\$92.50], except that the sum determined
29 under this paragraph may not exceed 50 percent.

30 * **Sec. 12.** AS 43.55.020(g) is amended to read:

31 (g) Notwithstanding any contrary provision of AS 43.05.225(a) and except as

1 **provided in (i) of this section** [AS 43.05.225], an unpaid amount of an installment
2 payment required under (a)(1) - (3) of this section that is not paid when due bears
3 interest (1) at the rate provided for an underpayment under 26 U.S.C. 6621 (Internal
4 Revenue Code), as amended, compounded daily, from the date the installment
5 payment is due until March 31 following the calendar year of production, and (2) as
6 provided for a delinquent tax under **AS 43.05.225(a)(1)** [AS 43.05.225] after that
7 March 31. Interest accrued under (1) of this subsection that remains unpaid after that
8 March 31 is treated as an addition to tax that bears interest under (2) of this subsection.
9 An unpaid amount of tax due under (a)(4) of this section that is not paid when due
10 bears interest as provided for a delinquent tax under **AS 43.05.225(a)(1)**
11 [AS 43.05.225].

12 * **Sec. 13.** AS 43.55.020(h) is amended to read:

13 (h) Notwithstanding any contrary provision of AS 43.05.280,

14 (1) an overpayment of an installment payment required under (a)(1) -
15 (3) of this section bears interest at the rate provided for an overpayment under 26
16 U.S.C. 6621 (Internal Revenue Code), as amended, compounded daily, from the later
17 of the date the installment payment is due or the date the overpayment is made, until
18 the earlier of

19 (A) the date it is refunded or is applied to an underpayment; or

20 (B) March 31 following the calendar year of production;

21 (2) except as provided under (1) of this subsection, interest with
22 respect to an overpayment is allowed only on any net overpayment of the payments
23 required under (a) of this section that remains after the later of March 31 following the
24 calendar year of production or the date that the statement required under
25 AS 43.55.030(a) is filed;

26 (3) interest is allowed under (2) of this subsection only from a date that
27 is 90 days after the later of March 31 following the calendar year of production or the
28 date that the statement required under AS 43.55.030(a) is filed; interest is not allowed
29 if the overpayment was refunded within the 90-day period;

30 (4) interest under (2) and (3) of this subsection is paid at the rate and in
31 the manner provided in **AS 43.05.225(a)(1)** [AS 43.05.225(1)].

1 * **Sec. 14.** AS 43.55.020 is amended by adding a new subsection to read:

2 (i) The unpaid amount of an installment payment required under (g) of this
3 section that is the direct result of the adoption of a regulation with retroactive
4 application does not bear interest until 30 days after the effective date of the regulation
5 with retroactive application.

6 * **Sec. 15.** AS 43.55 is amended by adding a new section to read:

7 **Sec. 43.55.022. Tax rebate for employing resident workers.** (a) Subject to
8 appropriation and the requirements of this section, a taxpayer subject to tax under
9 AS 43.55.011(e)(1) that incurs labor costs that are allowable lease expenditures under
10 AS 43.55.165 is entitled to a rebate if 80 percent or more of the labor is done by
11 resident workers.

12 (b) The amount of the rebate is equal to a percentage of the tax paid under
13 AS 43.55.011(e)(1) based on the percentage of labor done by resident workers the cost
14 of which is included in an allowable lease expenditure under AS 43.55.165. The
15 amount of the rebate is equal to the following percentage of the tax paid under
16 AS 43.55.011(e)(1):

17 (1) two percent if the percentage of labor done by resident workers is
18 at least 80 percent but less than 82.5 percent;

19 (2) four percent if the percentage of labor done by resident workers is
20 at least 82.5 percent but less than 85 percent;

21 (3) six percent if the percentage of labor done by resident workers is at
22 least 85 percent but less than 87.5 percent;

23 (4) eight percent if the percentage of labor done by resident workers is
24 at least 87.5 percent but less than 90 percent;

25 (5) 10 percent if the percentage of labor done by resident workers is at
26 least 90 percent but less than 92.5 percent;

27 (6) 12 percent if the percentage of labor done by resident workers is at
28 least 92.5 percent but less than 95 percent;

29 (7) 14 percent if the percentage of labor done by resident workers is at
30 least 95 percent but less than 97.5 percent;

31 (8) 16 percent if the percentage of labor done by resident workers is at

1 least 97.5 percent but less than 100 percent; and

2 (9) 20 percent if the percentage of labor done by resident workers is
3 100 percent.

4 (c) The percentage of labor done by resident workers is

5 (1) determined on a calendar year basis using the number of hours of
6 labor the cost of which is a lease expenditure, and includes all hours of labor,
7 regardless of whether a worker is paid on an hourly or some other basis; and

8 (2) a fraction the numerator of which is the number of hours of labor
9 done by resident workers the cost of which is a lease expenditure, and the denominator
10 of which is the number of hours of labor by all workers the cost of which is a lease
11 expenditure, expressed as a percentage.

12 (d) To qualify for the rebate under this section, a person subject to tax under
13 AS 43.55.011(e) shall file an application for the rebate at the time a statement must be
14 filed under AS 43.55.030(a) for the calendar year for which the rebate is claimed. The
15 application must include the following for the calendar year for which the rebate is
16 claimed:

17 (1) the number of hours of labor, the cost of which is a lease
18 expenditure;

19 (2) the number of hours of labor done by resident workers that are
20 included in (1) of this subsection;

21 (3) the total cost of labor that is a lease expenditure; and

22 (4) other information required by the department in a regulation
23 adopted to administer this section, including the names of the resident workers whose
24 hours of labor are included in (1) of this subsection.

25 (e) At the same time an application is made to the department under (d) of this
26 section, the person applying for a rebate shall file a report with the commissioner of
27 labor and workforce development. The report must include the information in (d)(1)
28 and (2) of this section and other information required by the commissioner of labor
29 and workforce development by regulation. Any amendment to the application in (d) of
30 this section that changes the information in (d)(1) and (2) of this section must also be
31 filed with the commissioner of labor and workforce development. At the request of the

1 commissioner, the Department of Labor and Workforce Development shall audit the
2 information reported in (d)(1) and (2) of this section and notify the commissioner of
3 the results of the audit.

4 (f) A person claiming a rebate under this section has the burden of proving
5 eligibility for the rebate, including a claim that an individual is a resident worker.

6 (g) The department shall report to the legislature the amount of rebates paid
7 under this section and statistical information relating to the percentage of labor done
8 by resident workers based on hours worked.

9 (h) In this section,

10 (1) "lease expenditure" means an expenditure allowed as a lease
11 expenditure under AS 43.55.165;

12 (2) "resident worker" has the meaning given in AS 43.40.092.

13 * **Sec. 16.** AS 43.55.023(g) is amended to read:

14 (g) The issuance of a transferable tax credit certificate under (d) of this section
15 or the purchase of a certificate under AS 43.55.028 does not limit the department's
16 ability to later audit a tax credit claim to which the certificate relates or to adjust the
17 claim if the department determines, as a result of the audit, that the applicant was not
18 entitled to the amount of the credit for which the certificate was issued. The tax
19 liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is increased
20 by the amount of the credit that exceeds that to which the applicant was entitled, or the
21 applicant's available valid outstanding credits applicable against the tax levied by
22 AS 43.55.011(e) are reduced by that amount. If the applicant's tax liability is increased
23 under this subsection, the increase bears interest under AS 43.05.225(a)(1)
24 [AS 43.05.225] from the date the transferable tax credit certificate was issued. For
25 purposes of this subsection, an applicant that is an explorer is considered a producer
26 subject to the tax levied by AS 43.55.011(e).

27 * **Sec. 17.** AS 43.55.023 is amended by adding a new subsection to read:

28 (m) A producer or explorer may take a tax credit for a well-related
29 expenditure, as follows:

30 (1) notwithstanding that a well-related expenditure may be a
31 deductible lease expenditure under AS 43.55.165 for purposes of calculating the

1 production tax value of oil and gas under AS 43.55.160(a), unless a credit for that
2 expenditure is taken under (a) of this section, AS 38.05.180(i), AS 41.09.010,
3 AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a well-related
4 expenditure may also elect to apply a credit against a tax levied by AS 43.55.011(e) in
5 the amount of 30 percent of that expenditure;

6 (2) a producer or explorer may take a credit for a well-related
7 expenditure incurred in connection with geological or geophysical exploration or in
8 connection with an exploration well only if the producer or explorer

9 (A) agrees, in writing, to the applicable provisions of
10 AS 43.55.025(f)(2); and

11 (B) submits to the Department of Natural Resources all data
12 that would be required to be submitted under AS 43.55.025(f)(2) for a credit
13 under AS 43.55.025;

14 (3) In this section, "well-related expenditure" means a lease
15 expenditure related to a well and includes a lease expenditure for the purposes of well
16 sidetracking, well deepening, well recompletion, well workover, an injection well, and
17 well-related seismic work, and an intangible drilling and development cost authorized
18 under 26 U.S.C. (Internal Revenue Code), as amended, and 26 C.F.R. 1.612-4,
19 regardless of the elections made under 26 U.S.C. 263(c), as amended, up to the flange
20 connecting the well head to the well line.

21 * **Sec. 18.** AS 43.55.040 is amended to read:

22 **Sec. 43.55.040. Powers of Department of Revenue.** Except as provided in
23 AS 43.05.405 - 43.05.499, the department may

24 (1) require a person engaged in production and the agent or employee
25 of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil
26 or gas to furnish, whether by the filing of regular statements or reports or otherwise,
27 additional information that is considered by the department as necessary to compute
28 the amount of the tax or of the rebate under AS 43.55.022; notwithstanding any
29 contrary provision of law, the disclosure of additional information under this
30 paragraph to the producer obligated to pay the tax does not violate AS 40.25.100(a) or
31 AS 43.05.230(a); before disclosing information under this paragraph that is otherwise

1 required to be held confidential under AS 40.25.100(a) or AS 43.05.230(a), the
2 department shall

3 (A) provide the person that furnished the information a
4 reasonable opportunity to be heard regarding the proposed disclosure and the
5 conditions to be imposed under (B) of this paragraph; and

6 (B) impose appropriate conditions limiting

7 (i) access to the information to those legal counsel,
8 consultants, employees, officers, and agents of the producer who have a
9 need to know that information for the purpose of determining or
10 contesting the producer's tax obligation; and

11 (ii) the use of the information to use for that purpose;

12 (2) examine the books, records, and files of the person;

13 (3) conduct hearings and compel the attendance of witnesses and the
14 production of books, records, and papers of any person;

15 (4) make an investigation or hold an inquiry that is considered
16 necessary to a disclosure of the facts as to

17 (A) the amount of production from any oil or gas location, or of
18 a company or other producer of oil or gas; and

19 (B) the rendition of the oil and gas for taxing purposes;

20 (5) require a producer, an explorer, or an operator of a lease or
21 property to file reports and copies of records that the department considers necessary
22 to forecast state revenue under this chapter; in the case of reports and copies of records
23 relating to proposed, expected, or approved unit expenditures for a unit for which one
24 or more working interest owners other than the operator have authority to approve unit
25 expenditures, the required reports and copies of records are limited to those reports or
26 copies of records that constitute or disclose communications between the operator and
27 the working interest owners relating to unit budget matters;

28 (6) require a producer that has an average total production in the state
29 of more than 100,000 barrels a day for a calendar year to report the gross value at the
30 point of production of the producer's taxable oil and gas in the state for a calendar year
31 and the total amount of lease expenditures in the state for that calendar year; and

1 (7) assess against a person required under this section to file a report,
 2 statement, or other document a penalty, as determined by the department under
 3 standards adopted in regulation by the department, of not more than \$1,000 for each
 4 day the person fails to file the report, statement, or other document after notice by the
 5 department; the penalty is in addition to any penalties under AS 43.05.220 and
 6 43.05.290 and is assessed, collected, and paid in the same manner as a tax deficiency
 7 under this title; the penalty shall bear interest at the rate specified under
 8 AS 43.05.225(a)(1) [AS 43.05.225(1)].

9 * **Sec. 19.** AS 43.55.060 is amended to read:

10 **Sec. 43.55.060. Delinquency.** When the tax provided for in this chapter
 11 becomes delinquent, it bears interest as provided in AS 43.05.225(a)(1)
 12 [AS 43.05.225(1)]. If any person fails to make a report required by this chapter, within
 13 the time prescribed by law for the report, the department shall examine the books,
 14 records and files of the person to determine the amount and value of the production to
 15 compute the tax, and the department shall add to the tax the cost of the examination,
 16 together with any penalties accrued.

17 * **Sec. 20.** AS 43.55.075(a) is amended to read:

18 (a) Except as provided in AS 43.05.260(c), for a tax period ending before
 19 January 1, 2010, the amount of a tax imposed by this chapter must be assessed within
 20 six years after the return was filed.

21 * **Sec. 21.** AS 43.77.020(d) is amended to read:

22 (d) A person subject to the tax under this chapter shall make quarterly
 23 payments of the tax estimated to be due for the year, as required under regulations
 24 adopted by the department. A taxpayer will be subject to an estimated tax penalty,
 25 determined by applying the interest rate specified in AS 43.05.225(a)(1)
 26 [AS 43.05.225] to the underpayment for each quarter, unless the taxpayer makes
 27 estimated tax payments in equal installments that total either

28 (1) at least 90 percent of the taxpayer's tax liability under this chapter
 29 for the tax year; or

30 (2) at least 100 percent of the taxpayer's tax liability under this chapter
 31 for the prior tax year.

1 * **Sec. 22.** AS 43.90.430 is amended to read:

2 **Sec. 43.90.430. Interest.** When a payment due to the state under this chapter
3 becomes delinquent, the payment bears interest at the rate applicable to a delinquent
4 tax under AS 43.05.225(a)(1) [AS 43.05.225].

5 * **Sec. 23.** AS 44.31.020 is amended to read:

6 **Sec. 44.31.020. Duties of department.** The Department of Labor and
7 Workforce Development shall

8 (1) enforce the laws and adopt regulations under them concerning
9 employer-employee relationships, including the safety, hours of work, wages, and
10 conditions of workers, including children;

11 (2) accumulate, analyze, and report labor statistics;

12 (3) operate systems of workers' compensation and unemployment
13 insurance;

14 (4) gather data reflecting the cost of living in the various election
15 districts of the state upon request of the director of personnel under AS 39.27.030; in
16 this paragraph, "election district" has the meaning given in AS 39.27.020(b);

17 (5) operate the federally funded employment and training programs
18 under 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998);

19 (6) administer the state's program of adult basic education and adopt
20 regulations to administer the program; [AND]

21 (7) administer the programs of the Alaska Vocational Technical Center
22 and adopt regulations to administer the programs, including regulations that set rates
23 for student tuition and room and board and fees for the programs and services
24 provided by the department regarding the Alaska Vocational Technical Center; **and**

25 **(8) at the request of the commissioner of revenue, audit**
26 **information described in AS 43.55.022(d)(1) and (2) that is submitted by a person**
27 **applying for a rebate under AS 43.55.022.**

28 * **Sec. 24.** Sections 11 and 15 of this Act take effect on the first day of the month
29 immediately following the effective date of secs. 1 - 10, 12 - 14, and 16 - 25 of this Act.

30 * **Sec. 25.** Except as provided in sec. 24 of this Act, this Act takes effect immediately under
31 AS 01.10.070(c).