

**HOUSE BILL NO. 367**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES ISAACSON, Guttenberg

Introduced: 2/26/14

Referred: Resources, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act creating a diesel fuel storage facility tax credit for public utilities; and  
2 providing for an effective date."

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 read:

5 **Sec. 43.20.052. Diesel fuel storage facility tax credit.** (a) A public utility that  
6 is an owner of a diesel fuel storage facility described in (b) of this section that  
7 commences commercial operation before January 1, 2020, may apply a refundable  
8 credit against a tax liability that may be imposed on the public utility under this  
9 chapter or receive the amount of the credit in the form of a payment for the taxable  
10 year in which the diesel fuel storage facility commences commercial operation. The  
11 tax credit or payment under this section may not exceed the lesser of \$15,000,000 or  
12 50 percent of the costs incurred to establish or expand the diesel fuel storage facility.  
13 The tax credit in this section is in addition to any other credit under this chapter for  
14 which the public utility is eligible.

1 (b) To qualify for the credit in this section, a diesel fuel storage facility

2 (1) must have a diesel or diesel-derived fuel storage volume of at least  
3 100,000 gallons;

4 (2) may not have been in operation as a diesel or diesel-derived fuel  
5 storage facility before the effective date of this Act; and

6 (3) must be regulated as a utility under AS 42.05 or provide diesel or  
7 diesel-derived fuel solely to a utility regulated under AS 42.05.

8 (c) To claim the credit or request a payment, a public utility shall submit to the  
9 department a certification of the capacity of the diesel fuel storage facility measured in  
10 gallons or the capacity of an expansion to an existing diesel fuel storage facility  
11 measured in gallons, the date that the diesel fuel storage facility commenced  
12 commercial operation, the date that any expansion to the diesel fuel storage facility  
13 commenced commercial operation, and other information required by the department.

14 (d) A public utility applying the credit under this section against a liability  
15 under this chapter shall claim the credit on the return of a public utility. A public  
16 utility entitled to a tax credit under this section that is greater than the tax liability of  
17 the public utility under this chapter may request a refund or payment in the amount of  
18 the unused portion of the tax credit.

19 (e) The department may use money available in the oil and gas tax credit fund  
20 established in AS 43.55.028 to make a refund or payment under (d) of this section in  
21 whole or in part if the department finds that

22 (1) the claimant does not have an outstanding liability to the state for  
23 unpaid delinquent taxes under this title; in this paragraph, "unpaid delinquent tax"  
24 means an amount of tax for which the department has issued an assessment that has  
25 not been paid and, if contested, has not been finally resolved in the taxpayer's favor;  
26 and

27 (2) after application of all available tax credits, the claimant's total tax  
28 liability under this chapter for the calendar year in which the claim is made is zero.

29 (f) For the purpose of determining the amount of the credit under this section,  
30 the costs incurred to establish a diesel fuel storage facility or to expand a diesel fuel  
31 storage facility shall be submitted to the department with verification by an

1 independent certified public accountant licensed in the state. The volume of working  
2 diesel fuel storage or volume of the expansion to an existing diesel fuel storage facility  
3 shall be verified by a professional engineer licensed in the state with relevant  
4 experience.

5 (g) A public utility may not receive a credit under this section for the  
6 acquisition of a diesel fuel storage facility for which a credit has been taken under this  
7 section.

8 (h) If the diesel fuel storage facility for which a credit was received under this  
9 section ceases commercial operation during the nine calendar years immediately  
10 following the calendar year in which the diesel fuel storage facility commences  
11 commercial operation, the tax liability under this chapter of the public utility that  
12 claimed the credit shall be increased, and a public utility not subject to the tax under  
13 this chapter that received a payment under (d) and (e) of this section shall be liable to  
14 the state in the amount determined in this subsection. The amount of the increase in  
15 tax liability or liability to the state

16 (1) for a public utility subject to the tax under this chapter, shall be  
17 determined and assessed for the taxable year in which the diesel fuel storage facility  
18 ceases commercial operation, regardless of whether the diesel fuel storage facility  
19 subsequently resumes commercial operation;

20 (2) for a public utility not subject to the tax due under this chapter,  
21 shall be determined and assessed as of December 31 of the calendar year in which the  
22 diesel fuel storage facility ceases commercial operation, regardless of whether the  
23 diesel fuel storage facility subsequently resumes commercial operation; and

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

29 (i) The issuance of a refund under this section does not limit the department's  
30 ability to later audit or adjust the claim if the department determines, as a result of the  
31 audit, that the public utility that claimed the credit was not entitled to the amount of

1 the credit. The tax liability of the public utility receiving the credit under this section is  
2 increased by the amount of the credit that exceeds that to which the public utility was  
3 entitled. If the tax liability is increased under this subsection, the increase bears  
4 interest at the rate set by AS 43.05.225 from the date the refund was issued.

5 (j) A public utility claiming a tax credit under this section for a diesel fuel  
6 storage facility that ceases commercial operation within nine calendar years  
7 immediately following the calendar year in which the diesel fuel storage facility  
8 commences commercial operation shall notify the department in writing of the date  
9 the diesel fuel storage facility ceased commercial operation. The notice must be filed  
10 with the return for the taxable year in which the diesel fuel storage facility ceases  
11 commercial operation.

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

13 (l) In this section,

14 (1) "ceases commercial operation" means that the diesel fuel storage  
15 facility fails to add or withdraw 20 percent or more of its working capacity of diesel  
16 fuel during a calendar year after the calendar year in which the diesel fuel storage  
17 facility commences commercial operation;

18 (2) "commences commercial operation" means the first input of diesel  
19 fuel into a diesel fuel storage facility for purposes other than testing.

20 \* **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).