

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 190

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES WHITAKER, Croft, Kerttula

Introduced: 3/22/01

Referred: House Special Committee on Oil and Gas, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act levying and collecting a tax on certain North Slope natural gas in place if**
2 **certain requirements relating to its sale and delivery are not met, and imposing a limit**
3 **on the Department of Natural Resources that relates to the issuance or extension of oil**
4 **and gas leases containing natural gas that is capable of production in paying quantities;**
5 **and providing for an effective date."**

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

7 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 **SHORT TITLE.** This Act may be known as the Alaska Natural Gas Pipeline Incentive
10 Act.

11 *** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 **LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that

1 (1) art. VIII, sec. 1, Constitution of the State of Alaska, provides that it is the
2 policy of the state to encourage the settlement of its land and the development of its resources
3 by making them available for maximum use consistent with the public interest;

4 (2) art. VIII, sec. 2, Constitution of the State of Alaska, requires the legislature
5 to provide for the utilization, development, and conservation of all natural resources
6 belonging to the state, including land and waters, for the maximum benefit of its people;

7 (3) the production and sale of oil and gas from state land is an important
8 source of revenue to the state and of job opportunities for all the people of the state;

9 (4) natural gas located on Alaska's North Slope is a valuable resource to the
10 state that has not been produced for sale in the market place, nor made available for in-state
11 utilization by the people of the state;

12 (5) the in-state utilization of North Slope natural gas will provide a more
13 economic and environmentally acceptable source of energy for the people of Alaska;

14 (6) the amount of natural gas located on the North Slope is substantial and, if
15 sold, will generate significant revenue to the state and opportunities and benefits to its people
16 for many years;

17 (7) in order to facilitate the commercialization of North Slope natural gas, it is
18 necessary to provide an incentive to ensure that the cost to North Slope producers not to
19 commercialize, delay commercialization, or inhibit commercialization of North Slope natural
20 gas is prohibitive; and

21 (8) a policy of noncommercialization, delaying commercialization, or
22 inhibiting commercialization, when commercialization is economically feasible, is contrary to
23 the spirit and intent of art. VIII, secs. 1 and 2, Constitution of the State of Alaska.

24 (b) The intent of this Act is to

25 (1) provide the people of the state the maximum benefit possible through
26 extraction of natural resources, as required by the Constitution of the State of Alaska;

27 (2) foster and promote the long-term economic growth and development of the
28 state;

29 (3) establish a means by which the state can facilitate the availability for in-
30 state consumption and utilization of North Slope natural gas by the people of Alaska;

31 (4) establish a means by which the state can facilitate the commercialization of

1 North Slope natural gas.

2 * **Sec. 3.** AS 38.05.180(m) is amended to read:

3 (m) An oil and gas lease must cover a reasonably compact area not exceeding
 4 5,760 acres, and may be for a maximum period of 10 years, except that the
 5 commissioner may issue a lease for a period not less than five years upon a finding
 6 that it is in the best interests of the state. An oil and gas lease shall be automatically
 7 extended if and for so long thereafter as oil or gas is produced in paying quantities
 8 from the lease or if the lease is committed to a unit approved by the commissioner, **but**
 9 **the commissioner shall deny an automatic extension of the lease and may not**
 10 **extend the lease unless the lessee agrees to an amendment of the lease to include a**
 11 **provision by which the lessee is required to contract to sell the gas that is**
 12 **produced from the lease and delivered, in good and merchantable condition and**
 13 **pipeline quality, on the lease or at another mutually agreed location to a qualified**
 14 **bona fide purchaser.** A lease issued under this section covering land on which there
 15 is a well capable of producing oil or gas in paying quantities does not expire because
 16 the lessee fails to produce oil or gas unless the lessee is allowed reasonable time to
 17 place the well on a producing status. **A lease issued under this section on which**
 18 **there is a well capable of producing oil or gas in paying quantities must include a**
 19 **provision by which the lessee is required to contract to sell the gas that is**
 20 **produced from the lease and delivered, in good and merchantable condition and**
 21 **pipeline quality, on the lease or at another mutually agreed location to a qualified**
 22 **bona fide purchaser.** Upon extension, the commissioner may increase lease rentals
 23 so long as the increased rental rate does not exceed 150 percent of the rate for the
 24 preceding year. If drilling has commenced on the expiration date of the primary term
 25 of the lease and is continued with reasonable diligence, including such operations as
 26 redrilling, sidetracking, or other means necessary to reach the originally proposed
 27 bottom hole location, the lease continues in effect until 90 days after drilling has
 28 ceased and for so long thereafter as oil or gas is produced in paying quantities. An oil
 29 and gas lease issued under this section **that** [WHICH] is subject to termination by
 30 reason of cessation of production does not terminate if, within 60 days after
 31 production ceases, reworking or drilling operations are commenced on the land under

1 lease and are thereafter conducted with reasonable diligence during the period of
2 nonproduction. **For purposes of this subsection,**

3 **(1) a "qualified bona fide purchaser" is a public or private entity**
4 **that enters into a gas purchase agreement or agreements with a lessee or lessees**
5 **and if the public or private entity has obtained the requisite rights-of-way,**
6 **licenses, and permits to construct and operate a natural gas transmission system;**
7 **and**

8 **(2) if two or more qualified bona fide purchasers offer to purchase**
9 **the gas, the commissioner shall issue or extend the lease only if the lessee enters**
10 **into an agreement with the qualified bona fide purchaser that provides the**
11 **greatest long-term return to the state.**

12 * **Sec. 4.** AS 43.58 is amended by adding new sections to read:

13 **Sec. 43.58.210. Tax on certain proven gas reserves.** (a) An annual tax is
14 levied each calendar year on the full and true value of taxable property under this
15 chapter.

16 (b) The annual rate of levy is 2 cents per 1,000 cubic feet.

17 **Sec. 43.58.220. Property subject to tax.** The provisions of this chapter apply
18 to natural gas in place from all state leases on the North Slope having proven gas
19 reserves except gas from a lease that before, on, or after the effective date of this
20 section is determined to be necessary

21 (1) for reinjection into a reservoir in the course of enhanced recovery
22 operations ordered or approved by the Alaska Oil and Gas Conservation Commission
23 in accordance with AS 31.05.030 and regulations adopted under authority of that
24 section; or

25 (2) for consumption or use in production operations for the lease or
26 that is to be sold or otherwise transferred by the lessee to another producer for
27 consumption or use in production operations involving North Slope oil and gas
28 production facilities.

29 **Sec. 43.58.230. Assessment; full and true value.** (a) The department shall
30 assess taxable property under this chapter to the owner of it at its full and true value as
31 of January 1 of each year.

1 (b) The full and true value of taxable property under this chapter is the
 2 estimated price that the taxable property would bring in an open market and under the
 3 then prevailing market conditions in a sale between a willing seller and a willing buyer
 4 both conversant with the property and with prevailing values. In determining the full
 5 and true value of taxable property, the department shall consider all factors that may
 6 be known by the department to affect the value of taxable property, including the
 7 discounted present value of the expected future net income from the taxable property.

8 **Sec. 43.58.240. Assessment roll.** The department shall prepare annually the
 9 assessment roll for taxation under this chapter. The roll must contain

- 10 (1) a description of all taxable property;
 11 (2) the assessed value of all taxable property; and
 12 (3) the names and addresses of persons owning or otherwise holding
 13 an interest in taxable property.

14 **Sec. 43.58.250. Assessment notice.** On or before April 15 of each year, the
 15 department shall send to every owner of taxable property subject to levy and collection
 16 of taxes under this chapter named in the assessment roll a notice of assessment
 17 showing the assessed value of the property. The notice of assessment is effective on
 18 the date of its mailing.

19 **Sec. 43.58.260. Appeal.** (a) A person aggrieved by the action of the
 20 department in making an assessment may appeal that action and obtain a hearing upon
 21 its validity before the department by filing written objections to the assessment not
 22 later than 20 days after the effective date of the assessment notice.

23 (b) The procedures for conduct of the hearing and preliminary activities to it
 24 shall be in accordance with AS 44.62.350, 44.62.430, 44.62.450, 44.62.460,
 25 44.62.480, 44.62.500 - 44.62.550, 44.62.590, and 44.62.610 - 44.62.640. For the
 26 purposes of this section, the term "respondent" used in those sections shall be
 27 considered to include the person aggrieved by action of the department. The
 28 department shall provide by regulation for notices of hearing under this section to
 29 interested persons. At the hearing, the appellant bears the burden of proof. In the
 30 absence of this proof, the assessment is to be upheld by the department. If the
 31 department, after hearing, determines that a correction of the assessment is warranted,

1 the department shall correct the assessment and the assessment roll.

2 (c) Within 30 days after the decision by the department following the hearing,
3 a person aggrieved by that decision may appeal to the superior court.

4 **Sec. 43.58.270. Certification.** On or before June 15 of each year, the
5 department shall certify the final assessment roll and mail to the owner, operator, or
6 other person filing a return and paying tax on the taxable property a statement of the
7 amount of tax due.

8 **Sec. 43.58.280. Supplemental assessment rolls.** The department shall
9 include property omitted from the assessment roll on a supplemental roll, using the
10 procedures set out in AS 43.58.230 - 43.58.250 and 43.58.290 - 43.58.300 for the
11 original roll.

12 **Sec. 43.58.290. Investigation.** (a) The department may make an
13 investigation of property on which a return has been filed or on property for which a
14 return has not been filed. In either case, the department shall make its own valuation
15 of the taxable property, which is prima facie evidence of the property's full and true
16 value.

17 (b) An employee or agent of the department may enter any premises necessary
18 for the investigation during reasonable hours and may examine property and other
19 appropriate records. The owner of taxable property, upon request, shall furnish to the
20 employee or agent of the department reasonable assistance required for the
21 investigation. If an employee or agent of the department seeking to enter any premises
22 necessary for an investigation under this section or to obtain reasonable assistance
23 required for an investigation under this section is refused entry or assistance, the
24 superior court may, after reasonable notice to and hearing of the owner, order the
25 owner to allow the entry or to furnish the assistance.

26 (c) For the purpose of the investigation of property, the owner, operator, or
27 other person filing a return and paying the tax on the taxable property or a
28 representative may be required to appear for examination under oath by the
29 department.

30 **Sec. 43.58.300. Returns and payment of tax.** (a) A return of taxable
31 property shall be submitted on or before February 1 on the form prescribed by the

1 department based on property values existing on January 1 of each calendar year,
2 except as otherwise provided in this chapter. The return shall be submitted by

3 (1) a person who is the owner of the property, or who controls that
4 property as agent, or on account of any other person;

5 (2) a guardian or other person who has charge of taxable property
6 belonging to a minor or other person;

7 (3) the trustee of a trust estate holding taxable property in trust for the
8 benefit of another person;

9 (4) the executor or administrator of a deceased person's estate that
10 includes taxable property;

11 (5) the receiver of a corporation who has its assets in hand.

12 (b) The person required to submit the return specified under (a)(1) of this
13 section is primarily liable for payment of the tax levied by this chapter. The persons
14 or estates specified in (a)(2) - (5) of this section in whose behalf the tax levied by this
15 chapter is to be paid are secondarily liable for payment of the tax. With the written
16 approval of the department, an operator or nonoperator of the lease or property may
17 submit returns or make payment of the tax levied under this chapter on behalf of the
18 operator or nonoperator and other persons as the department may approve.

19 (c) The tax levied under this chapter is payable to the department on or before
20 June 30 of each year or in installments at the times and under the conditions of the
21 department may by regulation require.

22 (d) With the prior written approval of the department, a person submitting
23 returns or making payments as required under this chapter for more than one taxable
24 property may regard the leases or properties as a single taxable property for purposes
25 of submitting those reports or making those payments.

26 (e) A person making payment of the tax levied under this chapter on behalf of
27 one or more other persons owning or otherwise holding an interest in a taxable
28 property may withhold a proportionate share of the payment from any proceeds or
29 other benefits from the taxable property owed to any person on whose behalf the
30 payment is made. Unless otherwise specifically provided by written contract or
31 agreement, the person so withholding a proportionate share of the tax levied under this

1 chapter incurs no liability to those from whom it is withheld by virtue of having made
2 the withholding.

3 (f) The department may, by written notice, require a person filing a return to
4 submit additional information to the department no later than 30 days after the notice.

5 **Sec. 43.58.310. Remedy.** The remedy of distraint on property set out in
6 AS 43.20.270 applies to the tax, penalty, and interest levied by this chapter.

7 **Sec. 43.58.320. Regulations.** The department may adopt regulations in
8 accordance with AS 44.62 (Administrative Procedure Act) as appropriate to
9 administer and enforce this chapter.

10 **Sec. 43.58.395. Definitions.** In this chapter,

11 (1) "gas" and "natural gas" have the meanings given to "gas" in
12 AS 43.55.900;

13 (2) "lease or property" means any right, title, or interest in or the right
14 to produce or recover gas, including

15 (A) a mineral interest;

16 (B) a leasehold interest;

17 (C) a working interest, a royalty interest, an overriding royalty
18 interest, production payment, net profit interest, or any other interest in a lease,
19 concession, joint venture, or other agreement for gas exploration, development,
20 or production;

21 (D) a working interest, a royalty interest, an overriding royalty
22 interest, production payment, net profit interest, or any other interest in an
23 agreement for unitization or pooling under provisions of 26 U.S.C. 614(b)(3)
24 (Internal Revenue Code);

25 (3) "North Slope" means the area of Alaska lying north of 68 degrees
26 North latitude;

27 (4) "operator" means the person conducting the exploration,
28 development, or production operation for a lease or property;

29 (5) "proven gas reserves" means the volume of gas in a known deposit
30 that geological and engineering information indicates is recoverable in the future
31 under prevailing economic conditions and technology.

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

3 **LESSEE AUTHORIZED TO SURRENDER LEASE.** To avoid liability under
4 AS 43.58, added by sec. 4 of this Act, for payment of the tax on certain proven North Slope
5 gas reserves, a lessee who owns gas subject to the provisions of AS 43.58 may, consistent
6 with the regulations adopted by the Department of Natural Resources under authority of
7 AS 38.05.020 relating to surrenders of rights in land held under lease, surrender the lessee's
8 rights under the lease to the Department of Natural Resources if the lessee surrenders the
9 rights no later than December 31, 2003, and complies with all applicable requirements of the
10 department's regulations and of the lease that relate to surrender of the lessee's rights in it.

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

13 **CONDITIONAL EFFECT OF SECTION 4 OF THIS ACT.** (a) Section 4 of this Act
14 takes effect under sec. 10 of this Act unless, no later than December 31, 2003, not less than
15 500,000,000,000 cubic feet of North Slope natural gas, as that term is defined in
16 AS 43.58.395, added by sec. 4 of this Act, that is undeveloped on the effective date of this
17 section, is annually committed by contract for sale and timely delivery as commercially
18 marketable gas to a qualified bona fide purchaser, not for enhanced recovery operations, for a
19 contract term of at least 20 years, with delivery scheduled to begin no later than December 31,
20 2007.

21 (b) For the purposes of (a) of this section, "qualified bona fide purchaser" has the
22 meaning given in AS 38.05.180(m), as amended by sec. 3 of this Act.

23 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **CONDITIONAL EFFECT OF SECTION 4 OF THIS ACT.** Section 4 of this Act
26 takes effect under sec. 11 of this Act

27 (1) if, under sec. 6 of this Act, the provisions of AS 43.58.210 - 43.58.395 did
28 not take effect; and

29 (2) unless, no later than December 31, 2007, the cubic feet of North Slope
30 natural gas, as that term is defined in AS 43.58.395, added by sec. 4 of this Act, that is
31 undeveloped on the effective date of this section, that has been committed by contract for sale

1 and timely delivery as commercially marketable gas as required by sec. 6 of this Act is
2 deliverable as provided by the appropriate terms of the contract.

3 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 ENFORCEMENT OF PROVISIONS OF SECS. 6 AND 7 OF THIS ACT. On or after
6 January 1, 2004, any qualified voter may apply to the superior court to compel the superior
7 court, by mandamus or otherwise, to require the commissioner of revenue to perform the
8 duties of the commissioner under AS 43.58.210 - 43.58.395, added by sec. 4 of this Act, if
9 sec. 4 of this Act has taken effect.

10 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 CONDITIONAL DELETION OF REFERENCES TO MATERIAL ENACTED BY
13 SECTION 4 OF THIS ACT. If, before January 2, 2008, the provisions of AS 43.58.210 -
14 43.58.395 have not taken effect, the revisor of statutes shall delete from the Alaska Statutes
15 references to the following sections added by sec. 4 of this Act: AS 43.58.210, 43.58.220,
16 43.58.230, 43.58.240, 43.58.250, 43.58.260, 43.58.270, 43.58.280, 43.58.290, 43.58.300,
17 43.58.310, 43.58.320, and 43.58.395.

18 * **Sec. 10.** If, under sec. 6 of this Act, sec. 4 of this Act takes effect, it takes effect
19 January 1, 2004.

20 * **Sec. 11.** If, under sec. 7 of this Act, sec. 4 of this Act takes effect, it takes effect
21 January 1, 2008.