

HOUSE BILL NO. 482

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CROFT

Introduced: 2/16/04

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 providing for an**
3 **effective date."**

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

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

7 SHORT TITLE. This Act may be known as the Alaska Natural Gas Pipeline Incentive
8 Act.

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

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

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

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

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

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

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

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

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

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

21 (b) The intent of this Act is to

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

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

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

28 (4) establish a means by which the state can facilitate the commercialization of
29 North Slope natural gas.

30 * **Sec. 3.** AS 43.58 is amended by adding new sections to read:

31 **Sec. 43.58.210. Tax on certain proven gas reserves.** (a) An annual tax is

1 levied each calendar year on the estimated volume of proven gas reserves subject to
2 tax under this chapter.

3 (b) The annual rate of levy is 2 cents for each 1,000 cubic feet of natural gas.

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

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

12 (2) for consumption or use in production operations for the lease or
13 that is to be sold or otherwise transferred by the lessee to another producer for
14 consumption or use in production operations involving North Slope oil and gas
15 production facilities.

16 **Sec. 43.58.230. Determination of volume of proven gas reserves.** The
17 department shall estimate the volume of proven gas reserves taxable under this chapter
18 as of January 1 of each year. In determining the volume of the gas reserves, the
19 department shall consider all factors that may be known by the department to affect
20 the determination of volume.

21 **Sec. 43.58.240. Tax roll.** The department shall prepare annually the roll for
22 taxation under this chapter. The roll must contain

23 (1) a description of all taxable property;

24 (2) the volume of taxable gas reserves; and

25 (3) the names and addresses of persons owning or otherwise holding
26 an interest in taxable property.

27 **Sec. 43.58.250. Notice.** On or before April 15 of each year, the department
28 shall send to every owner of taxable property subject to levy and collection of taxes
29 under this chapter named in the tax roll a notice showing the volume of gas reserves
30 for the property. The notice is effective on the date of its mailing.

31 **Sec. 43.58.260. Appeal.** (a) A person aggrieved by the action of the

1 department in making a determination under AS 43.58.240 or 43.58.250 may appeal
 2 that action and obtain a hearing upon its validity before the department by filing
 3 written objections to the determination not later than 20 days after the effective date of
 4 the notice.

5 (b) The procedures for conduct of the hearing and preliminary activities to it
 6 shall be in accordance with AS 44.62.350, 44.62.430, 44.62.450, 44.62.460,
 7 44.62.480, 44.62.500 - 44.62.550, 44.62.590, and 44.62.610 - 44.62.640. For the
 8 purposes of this section, the term "respondent" used in those sections shall be
 9 considered to include the person aggrieved by action of the department. The
 10 department shall provide by regulation for notices of hearing under this section to
 11 interested persons. At the hearing, the appellant bears the burden of proof. In the
 12 absence of this proof, the department shall uphold the determination. If the
 13 department, after hearing, determines that a correction is warranted, the department
 14 shall correct the determination and the taxation roll.

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

17 **Sec. 43.58.270. Certification.** On or before June 15 of each year, the
 18 department shall certify the final taxation roll and mail to the owner, operator, or other
 19 person filing a return and paying tax on the taxable property a statement of the amount
 20 of tax due.

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

24 **Sec. 43.58.290. Investigation.** (a) The department may make an
 25 investigation of property on which a return has been filed or on property for which a
 26 return has not been filed. In either case, the department shall make its own
 27 determination of the volume of the taxable property, which is prima facie evidence of
 28 the volume of proven natural gas reserves.

29 (b) An employee or agent of the department may enter any premises necessary
 30 for the investigation during reasonable hours and may examine property and other
 31 appropriate records. The owner of taxable property, upon request, shall furnish to the

1 employee or agent of the department reasonable assistance required for the
 2 investigation. If an employee or agent of the department seeking to enter any premises
 3 necessary for an investigation under this section or to obtain reasonable assistance
 4 required for an investigation under this section is refused entry or assistance, the
 5 superior court may, after reasonable notice to and hearing of the owner, order the
 6 owner to allow the entry or to furnish the assistance.

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

11 **Sec. 43.58.300. Returns and payment of tax.** (a) A return of taxable
 12 property shall be submitted on or before February 1 on the form prescribed by the
 13 department based on property values existing on January 1 of each calendar year,
 14 except as otherwise provided in this chapter. The return shall be submitted by

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

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

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

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

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

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

31 (c) The tax levied under this chapter is payable to the department on or before

1 June 30 of each year or in installments at the times and under the conditions of the
2 department may by regulation require.

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

7 (e) A person making payment of the tax levied under this chapter on behalf of
8 one or more other persons owning or otherwise holding an interest in a taxable
9 property may withhold a proportionate share of the payment from any proceeds or
10 other benefits from the taxable property owed to any person on whose behalf the
11 payment is made. Unless otherwise specifically provided by written contract or
12 agreement, the person so withholding a proportionate share of the tax levied under this
13 chapter incurs no liability to those from whom it is withheld by virtue of having made
14 the withholding.

15 (f) The department may, by written notice, require a person filing a return to
16 submit additional information to the department not later than 30 days after the notice.

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

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

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

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

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

27 (A) a mineral interest;

28 (B) a leasehold interest;

29 (C) a working interest, a royalty interest, an overriding royalty
30 interest, production payment, net profit interest, or any other interest in a lease,
31 concession, joint venture, or other agreement for gas exploration, development,

1 or production;

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

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

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

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

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

15 LESSEE AUTHORIZED TO SURRENDER LEASE. To avoid liability under
16 AS 43.58, added by sec. 3 of this Act, for payment of the tax on certain proven North Slope
17 gas reserves, a lessee who owns gas subject to the provisions of AS 43.58 may, consistent
18 with the regulations adopted by the Department of Natural Resources under authority of
19 AS 38.05.020 relating to surrenders of rights in land held under lease, surrender the lessee's
20 rights under the lease to the Department of Natural Resources if the lessee surrenders the
21 rights not later than December 31, 2007, and complies with all applicable requirements of the
22 department's regulations and of the lease that relate to surrender of the lessee's rights in it.

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

25 CONDITIONAL EFFECT OF SECTION 3 OF THIS ACT. (a) Section 3 of this Act
26 takes effect under sec. 9 of this Act unless, not later than December 31, 2007, not less than
27 500,000,000,000 cubic feet of North Slope natural gas, as that term is defined in
28 AS 43.58.395, added by sec. 3 of this Act, that is undeveloped on the effective date of this
29 section, is annually committed by contract for sale and timely delivery as commercially
30 marketable gas at a price of not less than \$1 for each MCF to a qualified bona fide purchaser,
31 not for enhanced recovery operations, for a contract term of at least 20 years, with delivery

1 scheduled to begin not later than December 31, 2011.

2 (b) For the purposes of (a) of this section,

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

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

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

12 **CONDITIONAL EFFECT OF SECTION 3 OF THIS ACT.** Section 3 of this Act
13 takes effect under sec. 10 of this Act

14 (1) if, under sec. 5 of this Act, the provisions of AS 43.58.210 - 43.58.395 did
15 not take effect; and

16 (2) unless, not later than December 31, 2011, the cubic feet of North Slope
17 natural gas, as that term is defined in AS 43.58.395, added by sec. 3 of this Act, that is
18 undeveloped on the effective date of this section, that has been committed by contract for sale
19 and timely delivery as commercially marketable gas at a price of not less than \$1 for each
20 MCF as required by sec. 5 of this Act is deliverable as provided by the appropriate terms of
21 the contract.

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

24 **ENFORCEMENT OF PROVISIONS OF SECS. 5 AND 6 OF THIS ACT.** On or after
25 January 1, 2008, any qualified voter may apply to the superior court to compel the superior
26 court, by mandamus or otherwise, to require the commissioner of revenue to perform the
27 duties of the commissioner under AS 43.58.210 - 43.58.395, added by sec. 3 of this Act, if
28 sec. 3 of this Act has taken effect.

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

31 **CONDITIONAL DELETION OF REFERENCES TO MATERIAL ENACTED BY**

1 SECTION 3 OF THIS ACT. If, before January 2, 2012, the provisions of AS 43.58.210 -
2 43.58.395 have not taken effect, the revisor of statutes shall delete from the Alaska Statutes
3 references to the following sections added by sec. 3 of this Act: AS 43.58.210, 43.58.220,
4 43.58.230, 43.58.240, 43.58.250, 43.58.260, 43.58.270, 43.58.280, 43.58.290, 43.58.300,
5 43.58.310, 43.58.320, and 43.58.395.

6 * **Sec. 9.** If, under sec. 5 of this Act, sec. 3 of this Act takes effect, it takes effect January 1,
7 2008.

8 * **Sec. 10.** If, under sec. 6 of this Act, sec. 3 of this Act takes effect, it takes effect
9 January 1, 2012.