

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 3004

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - THIRD SPECIAL SESSION

BY REPRESENTATIVES GARA, Berkowitz, Gardner, Kerttula, Gruenberg, Guttenberg, Croft, Crawford

Introduced: 7/25/06

Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to oil and gas, and to the oil and gas properties production (severance)
2 tax as it applies to oil; providing for an adjustment to increase the tax collected when oil
3 prices exceed \$20 per barrel and to reduce the tax collected when oil prices fall below
4 \$16 per barrel; providing for relief from the tax when the price per barrel is low or
5 when the taxpayer demonstrates that a reduction in the tax is necessary to establish or
6 reestablish production from an oil field or pool that would not otherwise be
7 economically feasible; delaying until July 1, 2016, the deadline for certain exploration
8 expenditures that form the basis for a credit against the tax on oil and gas produced
9 from a lease or property in the state; amending the powers and duties of the Alaska Oil
10 and Gas Conservation Commission; relating to the conservation surcharge and
11 additional conservation surcharge on oil; and providing for an effective date."

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

1 * **Section 1.** AS 31.05.030(d) is amended to read:

2 (d) The commission may require

3 (1) identification of ownership of wells, producing leases, tanks,
4 plants, and drilling structures;

5 (2) the making and filing of reports, well logs, drilling logs, electric
6 logs, lithologic logs, directional surveys, and all other subsurface information on a
7 well drilled for oil or gas, or for the discovery of oil or gas, or for geologic
8 information, and the required reports and information shall be filed within 30 days
9 after the completion, abandonment, or suspension of the well;

10 (3) the drilling, casing, and plugging of wells in a manner that will
11 prevent the escape of oil or gas out of one stratum into another, the intrusion of water
12 into an oil or gas stratum, the pollution of fresh water supplies by oil, gas, or salt
13 water, and prevent blowouts, cavings, seepages and fires;

14 (4) the furnishing of a reasonable bond with sufficient surety
15 conditions for the performance of the duty to plug each dry or abandoned well or the
16 repair of wells causing waste;

17 (5) the operation of wells with efficient gas-oil and water-oil ratios,
18 and may fix these ratios;

19 (6) the gauging or other measuring of oil and gas to determine the
20 quality and quantity of oil and gas;

21 (7) every person who produces oil or gas in the state to keep and
22 maintain for a period of five years in the state complete and accurate records of the
23 quantities of oil and gas produced, which shall be available for examination by the
24 Department of Natural Resources or its agents at all reasonable times;

25 (8) the measuring and monitoring of oil and gas pool pressures;

26 (9) the filing and approval of a plan of development and operation for
27 a field or pool in order to prevent waste, ensure [INSURE] a greater ultimate recovery
28 of oil and gas, and protect the correlative rights of persons owning interests in the
29 tracts of land affected;

30 **(10) working interest owners to provide, at cost plus a reasonable**
31 **rate of return determined under regulations adopted by the commission and**

1 without causing substantial injury to the owner, access to production and other
 2 facilities whenever necessary; for purposes of this paragraph, the commission's
 3 regulations must be consistent with the standards of the Regulatory Commission
 4 of Alaska adopted to implement AS 42.05.311(a); the commission may act under
 5 this paragraph

6 (A) to

7 (i) maximize the economic and physical recovery of
 8 the state's oil and gas resources;

9 (ii) maximize competition among parties seeking to
 10 explore and develop the state's oil and gas resources;

11 (iii) minimize the adverse affects of exploration,
 12 development, production, and transportation activity; or

13 (iv) otherwise protect the best interest of the state;

14 and

15 (B) only if the commission finds that the facility has excess
 16 capacity and that directing the working interest owner to provide access
 17 by or for the benefit of others would not materially interfere with the
 18 owner's paramount use of the facility.

19 * **Sec. 2.** AS 36.30.850(b)(33) is amended to read:

20 (33) contracts between the Department of Natural Resources or the
 21 Department of Revenue, as appropriate, and contractors qualified to evaluate
 22 hydrocarbon development, production, transportation, and economics, to assist the
 23 commissioner of natural resources or the commissioner of revenue, as appropriate,
 24 in evaluating applications for

25 (A) royalty increases or decreases or other royalty adjustments,
 26 and evaluating the related financial and technical data, entered into under
 27 AS 38.05.180(j); or

28 (B) tax reductions, and evaluating the related financial and
 29 technical data, as authorized by AS 43.55.011(i) and (j);

30 * **Sec. 3.** AS 43.55.011(a) is amended to read:

31 (a) There is levied upon the producer of oil a tax for all oil produced from

1 each lease or property in the state, less any oil the ownership or right to which is
2 exempt from taxation. The tax is equal to,

3 (1) in the case of North Slope oil, either the percentage-of-value
4 amount calculated under (b)(1) [(b)] of this section or the cents-per-barrel amount
5 calculated under (c)(1) [(c)] of this section, whichever is greater; if [, MULTIPLIED
6 BY THE ECONOMIC LIMIT FACTOR DETERMINED FOR THE OIL
7 PRODUCTION OF THE LEASE OR PROPERTY UNDER AS 43.55.013. IF] the
8 amounts calculated under (b)(1) and (c)(1) [(b) AND (c)] of this section are equal, the
9 amount calculated under (b)(1) [(b)] of this section shall be treated as if it were the
10 greater for purposes of this section;

11 (2) in the case of oil that is not North Slope oil, either the
12 percentage-of-value amount calculated under (b)(2) of this section or the cents-
13 per-barrel amount calculated under (c)(2) of this section, whichever is greater,
14 multiplied by the economic limit factor determined for the oil production of the
15 lease or property under AS 43.55.013; if the amounts calculated under (b)(2) and
16 (c)(2) of this section are equal, the amount calculated under (b)(2) of this section
17 shall be treated as if it were the greater for purposes of this section.

18 * Sec. 4. AS 43.55.011(b) is amended to read:

19 (b) The percentage-of-value amount equals,

20 (1) in the case of North Slope oil, the tax rate set out in (e) of this
21 section multiplied by the gross value at the point of production of taxable oil
22 produced from the lease or property;

23 (2) in the case of oil that is not North Slope oil, [12.25 PERCENT
24 OF THE GROSS VALUE AT THE POINT OF PRODUCTION OF TAXABLE OIL
25 PRODUCED ON OR BEFORE JUNE 30, 1981, FROM THE LEASE OR
26 PROPERTY AND] 15 percent of the gross value at the point of production of taxable
27 oil produced from the lease or property, [AFTER JUNE 30, 1981;] except that [FOR
28 A LEASE OR PROPERTY COMING INTO COMMERCIAL OIL PRODUCTION
29 AFTER JUNE 30, 1981,] the percentage-of-value amount equals 12.25 percent of the
30 gross value at the point of production of taxable oil produced from the lease or
31 property in the first five years after the date that is the start of commercial oil

1 production [AND EQUALS 15 PERCENT OF THE GROSS VALUE AT THE
2 POINT OF PRODUCTION OF TAXABLE OIL PRODUCED THEREAFTER
3 FROM THE LEASE OR PROPERTY].

4 * **Sec. 5.** AS 43.55.011(c) is amended to read:

5 (c) The cents-per-barrel amount equals,

6 (1) in the case of North Slope oil, \$0.80 per barrel for taxable
7 crude oil produced from the lease or property, as adjusted by AS 43.55.012,
8 multiplied by the economic limit factor determined for oil production of the lease
9 or property under AS 43.55.013 and by the price adjustment factor set out in
10 (e)(2)(D) of this section;

11 (2) in the case of oil that is not North Slope oil, [\$0.60 PER
12 BARREL OF TAXABLE OLD CRUDE OIL PRODUCED FROM THE LEASE OR
13 PROPERTY, AND] \$0.80 per barrel for [ALL OTHER] taxable crude oil produced
14 from the lease or property, [BOTH] as adjusted by AS 43.55.012.

15 * **Sec. 6.** AS 43.55.011 is amended by adding new subsections to read:

16 (e) This subsection and (f) - (k) of this section apply only to North Slope oil.
17 Except as provided in (h) of this section for heavy oil, the tax rate is the lesser of

18 (1) 27.5 percent; or

19 (2) the product of the volume adjusted tax rate multiplied by the price
20 adjustment factor; for purposes of

21 (A) this paragraph, the volume adjusted tax rate is the greater

22 of

23 (i) the applicable tax rate determined under (C) of this
24 paragraph, except that, if during a month in which the average ANS
25 West Coast price per barrel of oil is less than \$12, the applicable tax
26 rate is zero and the volume adjusted tax rate is determined only by the
27 application of (ii) of this subparagraph; or

28 (ii) the economic limit factor determined for the oil
29 production of the lease or property under AS 43.55.013 multiplied by
30 the nominal tax rate;

31 (B) subparagraph (A) of this paragraph, the nominal tax rate is

1 (i) 12.25 percent during the first five years from the
2 date that is the start of commercial oil production; and

3 (ii) 15 percent after the first five years from the date
4 that is the start of commercial oil production;

5 (C) sub-subparagraph (A)(i) of this paragraph, during each
6 month in which the average ANS West Coast price per barrel of oil averages

7 (i) at least \$16, the applicable rate is five percent;

8 (ii) at least \$15, but less than \$16, the applicable rate is
9 four percent;

10 (iii) at least \$14, but less than \$15, the applicable rate is
11 three percent;

12 (iv) at least \$13, but less than \$14, the applicable rate is
13 two percent; and

14 (v) at least \$12, but less than \$13, the applicable rate is
15 one percent; and

16 (D) this paragraph and for the purpose of determining the
17 cents-per-barrel amount under (c)(1) of this section, the price adjustment factor
18 is one, except that the price adjustment factor is the average ANS West Coast
19 price per barrel of oil for the month divided by

20 (i) 16 during each month in which the average ANS
21 West Coast price per barrel of oil is less than \$16 per barrel;

22 (ii) 20 during each month in which the average ANS
23 West Coast price per barrel of oil is more than \$20 per barrel.

24 (f) During a month in which the average ANS West Coast price per barrel of
25 oil is less than \$10 per barrel, the payment of

26 (1) one-half of the tax due and payable under this chapter is waived;
27 and

28 (2) the remaining one-half of the tax due and payable under this
29 chapter is deferred, subject to the following:

30 (A) the amount of tax payment that is deferred under this
31 paragraph is payable by the taxpayer

1 (i) during each month in which the average ANS West
2 Coast price per barrel of oil is at least \$16 per barrel; and

3 (ii) sequentially on a month-for-month basis in the
4 order in which the tax payment was deferred based on payment of one
5 month's deferred tax during each month that the average ANS West
6 Coast price per barrel of oil is at least \$16 per barrel; and

7 (B) amounts due and payable because of a payment deferral
8 under this paragraph bear interest at the rate of a 10-year note of the United
9 States treasury at the time of the deferral.

10 (g) Before February 1 of each year, the commissioner shall review the prices
11 described in (e) and (f) of this section and the related denominators set out in
12 (e)(2)(D)(i) and (ii) of this section and recommend to the legislature whether the prices
13 and denominators should be adjusted.

14 (h) Notwithstanding (e) of this section, the tax rate for heavy oil is the volume
15 adjusted tax rate provided in this subsection. The volume adjusted tax rate for heavy
16 oil is determined by multiplying the economic limit factor determined for the oil
17 production of the lease or property under AS 43.55.013 by the tax rate set out in
18 (e)(2)(A)(i) and (ii) of this section. In this subsection, "heavy oil" means oil equal to or
19 less than 20 degrees API gravity.

20 (i) A producer of North Slope oil may apply for a reduction of the tax due
21 under (e), (j), and (k) of this section on the production of North Slope oil

22 (1) if and to the extent that the amount calculated under (A) of this
23 paragraph is greater than the amount calculated under (B) of this paragraph, but a
24 reduction of the tax may not result in collection of tax due under this section that is
25 less than the amount calculated under (B) of this paragraph:

26 (A) the amount of tax on the production of the oil that results
27 from applying the provisions of (e) of this section;

28 (B) the amount of tax on the production of the oil that would
29 result from applying the provisions of (a)(2) and (b)(2) of this section as if the
30 oil were not North Slope oil; and

31 (2) if the commissioner in consultation with the commission of natural

1 resources determines that the application meets the requirements of
2 AS 38.05.180(j)(1)(A), (j)(1)(B), or (j)(1)(C).

3 (j) When the commissioner receives an application under (i) of this section,
4 the commissioner

5 (1) may not approve a tax reduction

6 (A) unless the applicant makes a clear and convincing showing
7 that the tax reduction meets the requirements of (i) of this section and this
8 subsection and is in the best interests of the state;

9 (B) that reduces the amount of the tax recovered to less than the
10 amount determined under (i)(1)(B) of this section;

11 (C) without including an explicit condition that the tax
12 reduction is not assignable without the prior written approval, which may not
13 be unreasonably withheld, of the commissioner; in the preliminary and final
14 findings and determinations prepared under this subsection, the commissioner
15 shall set out the conditions under which the tax reduction may be assigned;

16 (2) shall require the applicant to submit financial and technical data
17 that demonstrate that the requirements of (i) of this section and this subsection are
18 met; the commissioner

19 (A) may require disclosure of only the financial and technical
20 data related to development, production, and transportation of oil and gas or
21 gas only from the field or pool that are reasonably available to the applicant;
22 and

23 (B) shall, at the request of the applicant, keep confidential
24 under AS 38.05.035(a)(9) and AS 43.05.230 the dates described in (A) of this
25 paragraph; the confidential data may be disclosed by the commissioner to
26 legislators and to the legislative auditor and, if authorized by the chair or vice-
27 chair of the Legislative Budget and Audit Committee, to the director of the
28 division of legislative finance, the permanent employees of their respective
29 divisions who are responsible for evaluating a tax reduction, and to agents or
30 contractors of the legislative auditor or the legislative finance director who are
31 engaged under contract to evaluate the tax reduction if each signs an

1 appropriate confidentiality agreement;

2 (3) may require the applicant for the tax reduction under (i) of this
3 section and this subsection to pay for the services of an independent contractor,
4 selected by the applicant from a list of qualified consultants compiled by the
5 commissioner, to evaluate hydrocarbon development, production, transportation, and
6 economics and to assist the commissioner in evaluating the application and financial
7 and technical data; if, under this paragraph, the commissioner requires payment for the
8 services of an independent contractor, the total cost of the services to be paid for by
9 the applicant may not exceed \$150,000 for each application, and the commissioner
10 shall determine the relevant scope of the work to be performed by the contractor;
11 selection of an independent contractor under this paragraph is not subject to AS 36.30;

12 (4) shall make and publish a preliminary findings and determination on
13 the tax reduction application, give reasonable public notice of the preliminary findings
14 and determination, and invite public comment on the preliminary findings and
15 determination during a 30-day period for receipt of public comment;

16 (5) shall offer to appear before the Legislative Budget and Audit
17 Committee, on a day that is not earlier than 10 days and not later than 20 days after
18 giving public notice under (4) of this subsection, to provide the committee a review of
19 the commissioner's preliminary findings and determination on the tax reduction
20 application and administrative process; if the Legislative Budget and Audit Committee
21 accepts the commissioner's offer, the committee shall give notice of the committee's
22 meeting to all members of the legislature;

23 (6) shall make copies of the preliminary findings and determination
24 available to

25 (A) the presiding officer of each house of the legislature;

26 (B) the chairs of the legislature's standing committees on
27 resources; and

28 (C) the chairs of the legislature's special committees on oil and
29 gas, if any; and

30 (7) shall, within 30 days after the close of the public comment period
31 under (4) of this subsection,

1 (A) prepare a summary of the public response to the
2 commissioner's preliminary findings and determination;

3 (B) make a final findings and determination; the
4 commissioner's final findings and determination prepared under this
5 subparagraph regarding a tax reduction is final and not appealable to the court;

6 (C) transmit a copy of the final findings and determination to
7 the lessee; and

8 (D) make copies of the final findings and determination
9 available to each person who submitted comment under (4) of this subsection
10 and who has filed a request for the copies.

11 (k) In this section, "North Slope oil" means oil produced from a portion of a
12 reservoir located north of 68 degrees North latitude.

13 * **Sec. 7.** AS 43.55.012(b) is amended to read:

14 (b) The cents-per-barrel amount set out in AS 43.55.011(c)(1) and (2)
15 [AS 43.55.011(c)] applies to oil of 27 degrees API gravity. For each degree of API
16 gravity less than 27 degrees, the cents-per-barrel amount shall be reduced by \$.005
17 and for each degree of API gravity greater than 27 degrees the cents-per-barrel amount
18 shall be increased by \$.005 except that oil above 40 degrees API gravity shall be taxed
19 as 40 degree oil. In applying the gravity adjustment under this subsection, fractional
20 degrees of API gravity shall be disregarded.

21 * **Sec. 8.** AS 43.55.025(b) is amended to read:

22 (b) To qualify for the production tax credit under (a) of this section, an
23 exploration expenditure must be incurred for work performed on or after July 1, 2003,
24 and before July 1, **2016** [2007], except that an exploration expenditure for a Cook Inlet
25 prospect must be incurred for work performed on or after July 1, 2005, [AND
26 BEFORE JULY 1, 2010, AND EXCEPT THAT AN EXPLORATION
27 EXPENDITURE, IN WHOLE OR IN PART, SOUTH OF 68 DEGREES, 15
28 MINUTES, NORTH LATITUDE, AND NOT PART OF A COOK INLET
29 PROSPECT MUST BE INCURRED FOR WORK PERFORMED ON OR AFTER
30 JULY 1, 2003, AND BEFORE JULY 1, 2010,] and

31 (1) may be for seismic or geophysical exploration costs not connected

1 with a specific well;

2 (2) if for an exploration well,

3 (A) must be incurred by an explorer that holds an interest in the
4 exploration well for which the production tax credit is claimed;

5 (B) may be for either an oil or gas discovery well or a dry hole;
6 and

7 (C) must be for goods, services, or rentals of personal property
8 reasonably required for the surface preparation, drilling, casing, cementing,
9 and logging of an exploration well, and, in the case of a dry hole, for the
10 expenses required for abandonment if the well is abandoned within 18 months
11 after the date the well was spudded;

12 (3) may not be for testing, stimulation, or completion costs;
13 administration, supervision, engineering, or lease operating costs; geological or
14 management costs; community relations or environmental costs; bonuses, taxes, or
15 other payments to governments related to the well; or other costs that are generally
16 recognized as indirect costs or financing costs; and

17 (4) may not be incurred for an exploration well or seismic exploration
18 that is included in a plan of exploration or a plan of development for any unit on
19 May 13, 2003.

20 * **Sec. 9.** AS 43.55.201 is amended to read:

21 **Sec. 43.55.201. Surcharge levied.** (a) Every producer of oil shall pay a
22 surcharge of \$.01 [\$.02] per barrel of oil produced from each lease or property in the
23 state, less any oil the ownership or right to which is exempt from taxation.

24 (b) The surcharge imposed by (a) of this section is in addition to **the tax**
25 **imposed by AS 43.55.011** and **is due on the last day of the month on oil produced**
26 **from each lease or property during the preceding month. The surcharge** [SHALL
27 BE PAID IN THE SAME MANNER AS THE TAX IMPOSED BY AS 43.55.011 -
28 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.300 -
29 43.55.310.

30 (c) A producer of oil shall make reports of production in the same manner and
31 under the same penalties as required under **AS 43.55.011 - 43.55.180** [AS 43.55.011 -

1 43.55.150].

2 * **Sec. 10.** AS 43.55.201 is amended by adding a new subsection to read:

3 (d) Oil not considered under AS 43.55.020(e) to be produced from a lease or
4 property is not considered to be produced from a lease or property for purposes of this
5 section.

6 * **Sec. 11.** AS 43.55.221(d) is amended to read:

7 (d) If the commissioner of administration reports that the sum reported under
8 (b) of this section equals or exceeds **\$71,000,000 as adjusted under AS 43.55.225**
9 **[\$50,000,000]**, the commissioner of revenue shall suspend imposition and collection
10 of the surcharge levied and collected under AS 43.55.201. Suspension of the
11 imposition and collection of the surcharge begins on the first day of the calendar
12 quarter next following the commissioner's receipt of the commissioner of
13 administration's report under (b) of this section. Before the first day of a suspension
14 authorized by this subsection, the commissioner shall make a reasonable effort to
15 notify all persons who are known to the department to be paying the surcharge under
16 AS 43.55.201 that the surcharge will be suspended.

17 * **Sec. 12.** AS 43.55.221(e) is amended to read:

18 (e) Except as provided in AS 43.55.231, if the commissioner of administration
19 reports that the sum reported under (b) of this section is less than **\$71,000,000 as**
20 **adjusted under AS 43.55.225** **[\$50,000,000]**, the commissioner of revenue shall
21 require imposition and collection of the surcharge authorized under AS 43.55.201. If
22 the surcharge is not in effect, reimposition of the surcharge begins on the first day of
23 the calendar quarter next following the commissioner's receipt of the commissioner of
24 administration's report under (b) of this section. Before the first day of reimposition of
25 the surcharge authorized by this subsection, the commissioner shall make a reasonable
26 effort to notify all persons who are known to the department to be required to pay the
27 surcharge under AS 43.55.201 that the surcharge will be reimposed.

28 * **Sec. 13.** AS 43.55 is amended by adding a new section to read:

29 **Sec. 43.55.225. Adjustment of dollar amounts.** (a) The dollar amounts in
30 AS 43.55.221(d) and (e) change, as provided in this section, according to and to the
31 extent of changes in the Consumer Price Index for all urban consumers for the

1 Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United
 2 States Department of Labor (the index). The index for January 2006 is the reference
 3 base index.

4 (b) The dollar amounts change on October 1 of each year according to the
 5 percentage change between the index for January of that year and the most recent
 6 index used to determine whether to change the dollar amounts. After calculation of the
 7 new amounts, the resulting amounts shall be rounded to the nearest cent.

8 (c) If the index is revised, the percentage of change is calculated on the basis
 9 of the revised index. If a revision of the index changes the reference base index, a
 10 revised reference base index is determined by multiplying the reference base index
 11 applicable by the rebasing factor furnished by the Bureau of Labor Statistics, United
 12 States Department of Labor. If the index is superseded, the index referred to in this
 13 section is the one represented by the Bureau of Labor Statistics as reflecting most
 14 accurately changes in the purchasing power of the dollar for Alaska consumers.

15 (d) The department shall adopt a regulation announcing,

16 (1) on or before June 30 of each year, the changes in dollar amounts
 17 required by (b) of this section; and

18 (2) promptly after the changes occur, changes in the index required by
 19 (c) of this section, including, if applicable, the numerical equivalent of the reference
 20 base index under a revised reference base index and the designation or title of any
 21 index superseding the index.

22 * **Sec. 14.** AS 43.55.300 is amended to read:

23 **Sec. 43.55.300. Surcharge levied.** (a) Every producer of oil shall pay a
 24 surcharge of \$0.05 [\$0.03] per barrel of oil produced from each lease or property in the
 25 state, less any oil the ownership or right to which is exempt from taxation.

26 (b) The surcharge imposed by (a) of this section is in addition to **the tax**
 27 **imposed by AS 43.55.011** and **is due on the last day of the month on oil produced**
 28 **from each lease or property during the preceding month. The surcharge** [SHALL
 29 BE PAID IN THE SAME MANNER AS THE TAX IMPOSED BY AS 43.55.011 -
 30 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.201 -
 31 43.55.231.

1 (c) A producer of oil shall make reports of production in the same manner and
2 under the same penalties as required under AS 43.55.011 - 43.55.180 [AS 43.55.011 -
3 43.55.150].

4 * **Sec. 15.** AS 43.55.300 is amended by adding a new subsection to read:

5 (d) Oil not considered under AS 43.55.020(e) to be produced from a lease or
6 property is not considered to be produced from a lease or property for purposes of this
7 section.

8 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **RETROACTIVITY.** Sections 3 - 10, 14, and 15 of this Act are retroactive to
11 January 1, 2006, and apply to oil produced after December 31, 2005.

12 * **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).