

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 179

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATOR THERRIAULT

Introduced: 5/10/05

Referred: Community and Regional Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the taxation of minerals and mining property; relating to contracts**
2 **approved by municipalities for payments in lieu of taxes; and providing for an effective**
3 **date."**

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

5 * **Section 1.** AS 29.10.200 is amended by adding a new paragraph to read:

6 (64) AS 29.45.820 (severance taxes on minerals).

7 * **Sec. 2.** AS 29.45 is amended by adding a new section to read:

8 **Sec. 29.45.085. Tax on mining property.** (a) Real and tangible personal
9 property used or committed by contract or other agreement for use within the state
10 primarily in the production or transportation of minerals, or in the operation or
11 maintenance of facilities used in the production or transportation of minerals, and
12 located in a municipality incorporated on or after January 1, 2005, or located within an
13 area annexed by a municipality on or after January 1, 2005, may be taxed only in
14 accordance with AS 43.67.

1 (b) The following are exempt from taxation by municipalities incorporated on
 2 or after January 1, 2005, or extended by annexation on or after January 1, 2005, if the
 3 property is located within the newly annexed area:

- 4 (1) mineral leases, whether producing or not;
 5 (2) minerals in place;
 6 (3) minerals produced or extracted in the state;
 7 (4) the value of intangible exploration expenses;
 8 (5) roads, storage facilities, terminals, docks and other port facilities,
 9 and airstrips, publicly owned or privately owned and open to public use.

10 (c) A municipality may negotiate a contract for payments in lieu of taxes with
 11 an owner of real or tangible personal property used or committed by contract or other
 12 agreement for use within the state primarily in the production or transportation of
 13 minerals, or in the operation or maintenance of facilities used in the production or
 14 transportation of minerals, unless the property is subject to a state contract for
 15 payments in lieu of taxes under AS 43.67.010. If the owner makes the payments
 16 required under the contract, the property described in this section of an owner who is a
 17 party to a contract for payments in lieu of taxes with a municipality is exempt, as
 18 specified in the contract, from assessment of the property identified in the contract and
 19 all taxes identified in the contract that would be levied and collected by the
 20 municipality on the property.

21 * **Sec. 3.** AS 29.45 is amended by adding a new section to read:

22 **Sec. 29.45.820. Taxes on minerals.** A municipality may not impose a
 23 severance tax on minerals produced or extracted in the municipality other than a tax
 24 imposed before January 1, 2005. If a severance tax on minerals produced or extracted
 25 in a municipality was imposed before January 1, 2005, the municipality or its
 26 successor may continue to levy the tax, regardless of any subsequent annexation,
 27 merger, consolidation, unification, or reclassification of the municipality that imposed
 28 the tax before July 1, 2005. This section applies to home rule and general law
 29 municipalities. For purposes of this section, "mineral" means ore and mineral
 30 products other than sand, gravel, and coal.

31 * **Sec. 4.** AS 43 is amended by adding a new chapter to read:

1 **Chapter 67. Mining Property Tax.**

2 **Sec. 43.67.010. Levy of tax; payments in lieu of tax.** (a) An annual tax is
3 levied each tax year beginning January 1, 2006, on the full and true value of real and
4 tangible personal property used or committed by contract or other agreement for use
5 within this state primarily in the production or transportation of minerals, or in the
6 operation or maintenance of facilities used in the production or transportation of
7 minerals, located on land in the unorganized borough as of January 1, 2005.

8 (b) The tax rate in the unorganized borough is the mill rate specified in
9 AS 14.17.410(b)(2).

10 (c) The tax rate in a municipality incorporated on or after January 1, 2005, and
11 the tax rate within an area annexed by a municipality on or after January 1, 2005, is

12 (1) the tax rate the municipality applies to other real and tangible
13 property on an areawide basis; or

14 (2) if the borough does not impose an areawide property tax, the mill
15 rate required to meet the local contribution required of that municipality under
16 AS 14.17.410(b)(2) plus two mills.

17 (d) The department may negotiate a contract for payments in lieu of the tax
18 levied under this section. The department shall follow the procedures specified in
19 AS 43.82.400(a) and (b), 43.82.410 - 43.82.430, except that the department need not
20 consult with a municipal advisory group or provide copies of a proposed contract to
21 the chairs of the special committees on oil and gas, and AS 43.82.435. If the
22 legislature passes a bill that becomes law authorizing the contract, the parties may
23 execute the contract. Nothing in this subsection or the sections cited shall be
24 construed to preclude the legislature from changing the terms of the contract for
25 payments in lieu of taxes.

26 **Sec. 43.67.020. Terms of contracts for payments in lieu of taxes relating to**
27 **hiring of Alaska residents and contracting with Alaska businesses.** (a) The
28 commissioner shall include in a contract under AS 43.67.010(d) a term requiring the
29 property owner to comply with all valid federal, state, and municipal laws relating to
30 hiring Alaska residents and contracting with Alaska businesses to work in the state on
31 the approved qualified project and not to discriminate against Alaska residents or

1 Alaska businesses. Within the constraints of law, the commissioner shall also include
 2 in a contract under AS 43.67.010(d) a term that requires the property owner to employ
 3 Alaska residents and to contract with Alaska businesses to work in the state on the
 4 approved qualified project to the extent the residents and businesses are available,
 5 competitively priced, and qualified.

6 (b) The commissioner shall include in a contract under AS 43.67.010(d) a
 7 term requiring the qualified sponsor or qualified sponsor group and contractors of the
 8 qualified sponsor or qualified sponsor group to

9 (1) advertise for available positions in newspapers in the location
 10 where the work is to be performed and in other publications distributed throughout the
 11 state, including in rural areas; and

12 (2) use Alaska job service organizations located throughout the state
 13 and not just in the location where the work is to be performed in order to notify
 14 Alaskans of work opportunities on the approved qualified project.

15 (c) Subject to the voluntary agreement of the qualified sponsor, the
 16 commissioner may include a term in the contract providing for incentives to encourage
 17 training and hiring of Alaska residents.

18 (d) This section does not create or abridge individual rights and does not
 19 create a private right of action for any person.

20 (e) For purposes of this section,

21 (1) "Alaska business" means a firm or contractor that

22 (A) has held an Alaska business license for the preceding 12
 23 months;

24 (B) maintains, and has maintained for the preceding 12 months,
 25 a place of business in the state that competently and professionally deals in
 26 supplies, services, or construction of the nature required for the approved
 27 qualified project; and

28 (C) is

29 (i) a sole proprietorship and the proprietor is an Alaska
 30 resident;

31 (ii) a partnership and more than 50 percent of the

1 partnership interest is held by Alaska residents;

2 (iii) a limited liability company and more than 50
3 percent of the membership interest is held by Alaska residents;

4 (iv) a corporation that has been incorporated in the state
5 or is authorized to do business in the state; or

6 (v) a joint venture and a majority of the venturers
7 qualify as Alaska businesses under this paragraph;

8 (2) "Alaska job service organizations" means those offices maintained
9 by the state and recommended by the Department of Labor and Workforce
10 Development whose functions are to aid the unemployed or underemployed in finding
11 employment;

12 (3) "Alaska resident" means a natural person who

13 (A) receives a permanent fund dividend under AS 43.23; or

14 (B) is registered to vote under AS 15 and qualifies for a
15 resident fishing, hunting, or trapping license under AS 16;

16 (4) "available," as applied to an Alaska resident or Alaska business,
17 means that the resident or business is available for employment at the time required
18 and is located anywhere in the state, not just in the area of the state where the work is
19 to be performed;

20 (5) "qualified," as applied to an Alaska resident or Alaska business,
21 means that the resident or business possesses the requisite education, training, skills,
22 certification, or experience to perform the work necessary for a particular position or
23 to perform a particular service.

24 **Sec. 43.67.030. In place of municipal taxes.** For a period of 15 years after
25 the production commencement date, the taxes levied or authorized under
26 AS 43.67.010 are in place of the following taxes that might otherwise be imposed by a
27 municipality incorporated on or after January 1, 2005, on the property, or imposed by
28 a municipality incorporated before January 1, 2005, on property located within an area
29 annexed by the municipality on or after January 1, 2005:

30 (1) taxes on the sale or use of minerals;

31 (2) taxes on or measured by gross or net income from the taxable

1 property, including income from the exploration for, production of, or transportation
2 of minerals or taxable property; and

3 (3) any license, excise, fee, charge, severance, throughput, or other tax
4 on or pertaining to the taxable property or services used in or associated with the
5 taxable property or in its maintenance or operation unless the tax is also levied on
6 property or services not subject to tax under AS 43.67.010(a).

7 **Sec. 43.67.040. Assessment.** (a) The state assessor shall assess property for
8 the tax levied under AS 43.67.010 at its full and true value as of January 1 of the
9 assessment year except that the first assessment date shall be the production
10 commencement date. If the production commencement date is used as the assessment
11 date, the tax payable shall be prorated on the basis of the assessment year remaining.

12 (b) The full and true value of taxable property is

13 (1) on the production commencement date, the actual capital cost
14 incurred or accrued with respect to the property as of the date of assessment;

15 (2) determined on each January 1 after the commencement date on the
16 basis of replacement cost less depreciation.

17 (c) For purposes of this section, "actual capital cost" and "replacement cost"
18 do not include interest capitalized before or during the period of construction or the
19 value of intangible expenses.

20 **Sec. 43.67.050. Returns.** (a) The state assessor by notice may require every
21 person having ownership or control of an interest in taxable property to submit a
22 return within 30 days after the production commencement date and by January 31 of
23 each year following the production commencement date in the form prescribed by the
24 state assessor, based on property values existing on January 1 of each year, except as
25 otherwise provided in this chapter.

26 (b) The state assessor by written notice may require a person to provide
27 additional information within 30 days after the notice.

28 **Sec. 43.67.060. Investigation.** (a) The state assessor may investigate
29 property that is taxable under this chapter. The assessor may make a valuation of the
30 taxable property, which is prima facie evidence of full and true value.

31 (b) The state assessor may enter premises necessary for the investigation

1 during reasonable hours and may, subject to reasonable safety regulations generally
 2 imposed, examine property and appropriate records. The owner of the taxable
 3 property upon request shall furnish to the state assessor reasonable assistance required
 4 for the investigation. If refused entry, the state assessor may seek a court order to
 5 compel entry.

6 (c) For the purpose of the investigation the owner of the taxable property or a
 7 representative of the owner may be required to appear for examination under oath by
 8 the department.

9 **Sec. 43.67.070. Assessment roll.** The state assessor shall prepare annually the
 10 assessment roll for taxation under this chapter. The roll must contain

- 11 (1) a description of all taxable property;
- 12 (2) the assessed value of all taxable property;
- 13 (3) the names and addresses of persons owning property subject to
 14 assessment and taxation.

15 **Sec. 43.67.080. Assessment notice.** (a) On or before March 1 of each year,
 16 the state assessor shall send to every owner of taxable property named in the
 17 assessment roll a notice of assessment, showing the assessed value of the property.
 18 Notice of assessment is effective on the date of mailing.

19 (b) The state assessor shall send to a municipality a copy of the notice of
 20 assessment on taxable property that is assessed under the provisions of this chapter
 21 and that is located in the municipality.

22 **Sec. 43.67.090. Objection.** (a) An owner of taxable property or a
 23 municipality receiving an assessment notice may object to the assessment by advising
 24 the state assessor in writing of the objection to the assessment within 20 days after the
 25 effective date of the notice.

26 (b) The state assessor shall provide by regulation for notices of objections to
 27 the owners of taxable property and municipalities.

28 (c) Following an objection, the state assessor may adjust the assessment and
 29 the assessment roll. An adjustment based on an objection from an owner of taxable
 30 property or a municipality shall be made within 30 days after the effective date of the
 31 notice of assessment.

1 **Sec. 43.67.100. Appeal to the State Assessment Review Board.** The owner
 2 of taxable property or a municipality may appeal an assessment to the State
 3 Assessment Review Board established under AS 43.56.040. The appeal must be filed
 4 in writing within 30 days after an assessment or the adjustment, if any, made under
 5 AS 43.67.090.

6 **Sec. 43.67.110. Certification.** Not later than June 1 of each year, the
 7 department shall certify the final assessment roll and mail to the owner of the taxable
 8 property or an authorized agent a statement of the amount of tax due.

9 **Sec. 43.67.120. Supplementary assessment rolls.** The state assessor shall
 10 include taxable property omitted from the assessment roll on a supplementary roll
 11 using the procedures set out in this chapter for the original roll.

12 **Sec. 43.67.130. Collection and deposit.** (a) The tax levied by AS 43.67.010
 13 is payable to the department on or before June 30 of the taxable year.

14 (b) The department shall provide for voluntary prepayment and for payment
 15 by installments.

16 (c) The tax levied under AS 43.67.010 and interest and penalties collected
 17 with respect to this levy shall be deposited in a special mining tax property tax account
 18 in the general fund. The legislature may appropriate the balance of the account into
 19 the public education fund (AS 14.17.300).

20 (d) If jurisdiction over the taxable property is obtained by a municipality, the
 21 tax is payable to the municipality.

22 **Sec. 43.67.140. Penalty for delinquent taxes.** When the tax levied by
 23 AS 43.67.010 becomes delinquent, a penalty of 10 percent shall be added.

24 **Sec. 43.67.150. Remedy.** The remedy of distraint of property set out in
 25 AS 43.20.270 applies to the tax levied by AS 43.67.010. However, only property
 26 subject to the tax may be distrained.

27 **Sec. 43.67.160. Regulations.** The board, the state assessor, the Department of
 28 Commerce, Community, and Economic Development, and the Department of Revenue
 29 may adopt regulations under AS 44.62 (Administrative Procedure Act) as appropriate
 30 to carry out their respective duties under this chapter.

31 **Sec. 43.67.170. Exemptions from mining property tax.** (a) The tax levied

1 under AS 43.67.010 does not apply to roads, storage facilities, terminals, docks and
 2 other port facilities, and air strips, publicly owned or privately owned and open to
 3 public use.

4 (b) Property used in the production or transportation of minerals where the
 5 actual capital cost incurred or accrued with respect to the mine and related facilities is
 6 less than \$10,000,000 is exempt from taxation under AS 43.67.010.

7 **Sec. 43.67.180. Definitions.** In this chapter,

8 (1) "board" means the State Assessment Review Board under
 9 AS 43.56.040;

10 (2) "minerals" means valuable metals, ores, and coal;

11 (3) "production commencement date" means the date on which the
 12 initial shipment of products from mining operations is made;

13 (4) "real and tangible personal property" and "property" include

14 (A) buildings, machinery, appliances, supplies, equipment,
 15 transmission lines, power plants, and pipelines; and

16 (B) roads, storage facilities, terminals, docks and other port
 17 facilities, and air strips;

18 (5) "taxable property" means property taxable under AS 43.67.010.

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

21 **TRANSITION: REGULATIONS.** The Department of Revenue may proceed to adopt
 22 regulations to implement this Act. The regulations take effect under AS 44.62
 23 (Administrative Procedure Act), but not before the effective date of sec. 4 of this Act.

24 * **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).

25 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect January 1, 2006.