

**CS FOR SENATE BILL NO. 2001(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SPECIAL SESSION

**BY THE SENATE RESOURCES COMMITTEE**

**Offered: 10/29/07**

**Referred: Judiciary, Finance**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the production tax on oil and gas and to conservation surcharges on**  
2 **oil; relating to the sharing between agencies of certain information relating to the**  
3 **production tax and to oil and gas or gas only leases; amending the State Personnel Act**  
4 **to place in the exempt service certain state oil and gas auditors and their immediate**  
5 **supervisors; providing for retroactive application of certain statutory and regulatory**  
6 **provisions relating to the production tax on oil and gas; making conforming**  
7 **amendments; and providing for an effective date."**

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

9 \* **Section 1.** AS 38.05.035(a) is amended to read:

10 (a) The director shall

11 (1) have general charge and supervision of the division and may  
12 exercise the powers specifically delegated to the director; **the director** may employ  
13 and fix the compensation of assistants and employees necessary for the operations of

1 the division; **the director** [AND] is the certifying officer of the division, with the  
 2 consent of the commissioner, and may approve vouchers for disbursements of money  
 3 appropriated to the division;

4 (2) manage, inspect, and control state land and improvements on it  
 5 belonging to the state and under the jurisdiction of the division;

6 (3) execute laws, rules, regulations, and orders adopted by the  
 7 commissioner;

8 (4) prescribe application procedures and practices for the sale, lease,  
 9 or other disposition of available land, resources, property, or interest in them;

10 (5) prescribe fees or service charges, with the consent of the  
 11 commissioner, for any public service rendered;

12 (6) under the conditions and limitations imposed by law and the  
 13 commissioner, issue deeds, leases, or other conveyances disposing of available land,  
 14 resources, property, or any interests in them;

15 (7) have jurisdiction over state land, except that land acquired by the  
 16 Alaska World War II Veterans Board and the Agricultural Loan Board or the  
 17 departments or agencies succeeding to their respective functions through foreclosure  
 18 or default; to this end, the director possesses the powers and, with the approval of the  
 19 commissioner, shall perform the duties necessary to protect the state's rights and  
 20 interest in state land, including the taking of all necessary action to protect and  
 21 enforce the state's contractual or other property rights;

22 (8) [REPEALED

23 (9)] maintain **the** [SUCH] records [AS] the commissioner considers  
 24 necessary, administer oaths, and do all things incidental to the authority imposed; the  
 25 following records and files shall be kept confidential upon request of the person  
 26 supplying the information:

27 (A) the name of the person nominating or applying for the  
 28 sale, lease, or other disposal of land by competitive bidding;

29 (B) before the announced time of opening, the names of the  
 30 bidders and the amounts of the bids;

31 (C) all geological, geophysical, and engineering data supplied,

1 whether or not concerned with the extraction or development of natural  
2 resources;

3 (D) except as provided in AS 38.05.036, cost data and  
4 financial information submitted in support of applications, bonds, leases, and  
5 similar items;

6 (E) applications for rights-of-way or easements;

7 (F) requests for information or applications by public agencies  
8 for land **that** [WHICH] is being considered for use for a public purpose;

9 **(9)** [(10)] account for the fees, licenses, taxes, or other money  
10 received in the administration of this chapter including the sale or leasing of land,  
11 identify their source, and promptly transmit them to the proper fiscal department after  
12 crediting them to the proper fund; receipts from land application filing fees and  
13 charges for copies of maps and records shall be deposited immediately in the general  
14 fund of the state by the director;

15 **(10)** [(11)] select and employ or obtain at reasonable compensation  
16 cadastral, appraisal, or other professional personnel the director considers necessary  
17 for the proper operation of the division;

18 **(11)** [(12)] be the certifying agent of the state to select, accept, and  
19 secure by whatever action is necessary in the name of the state, by deed, sale, gift,  
20 devise, judgment, operation of law, or other means any land, of whatever nature or  
21 interest, available to the state; and be the certifying agent of the state, to select,  
22 accept, or secure by whatever action is necessary in the name of the state any land, or  
23 title or interest to land available, granted, or subject to being transferred to the state  
24 for any purpose;

25 **(12) on request, furnish records, files, and other information**  
26 **related to the administration of AS 38.05.180 to the Department of Revenue for**  
27 **use in forecasting state revenue under or administering AS 43.55, whether or not**  
28 **those records, files, and other information are required to be kept confidential**  
29 **under (8) of this subsection; in the case of records, files, or other information**  
30 **required to be kept confidential under (8) of this subsection, the Department of**  
31 **Revenue shall maintain the confidentiality that the Department of Natural**

1           **Resources is required to extend to records, files, and other information under (8)**  
 2           **of this subsection**

3                               [(13) REPEALED

4                               (14) REPEALED].

5       \* **Sec. 2.** AS 38.05.036(b) is amended to read:

6                       (b) The Department of Revenue may obtain from the department information  
 7 relating to royalty and net profits payments and to exploration incentive credits under  
 8 this chapter or under AS 41.09, whether or not that information is confidential. The  
 9 Department of Revenue may use the information in carrying out its functions and  
 10 responsibilities under AS 43, and shall hold that information confidential to the extent  
 11 required by an agreement with the department or by **AS 38.05.035(a)(8)**  
 12 [AS 38.05.035(a)(9)], AS 41.09.010(d), or AS 43.05.230.

13       \* **Sec. 3.** AS 38.05.036(f) is amended to read:

14                       (f) Except as otherwise provided in this section or in connection with official  
 15 investigations or proceedings of the department, it is unlawful for a current or former  
 16 officer, employee, or agent of the state to divulge information obtained by the  
 17 department as a result of an audit under this section that is required by an agreement  
 18 with the department or by **AS 38.05.035(a)(8)** [AS 38.05.035(a)(9)] or  
 19 AS 41.09.010(d) to be kept confidential.

20       \* **Sec. 4.** AS 38.05.036(g) is amended to read:

21                       (g) Nothing in this section prohibits the publication of statistics in a manner  
 22 that maintains the confidentiality of information to the extent required by an  
 23 agreement with the department or by **AS 38.05.035(a)(8)** [AS 38.05.035(a)(9)] or  
 24 AS 41.09.010(d).

25       \* **Sec. 5.** AS 38.05.123(f) is amended to read:

26                       (f) As part of the timber sale negotiations authorized by this section, the  
 27 commissioner may require a prospective purchaser negotiating a timber sale contract  
 28 to submit financial and technical data that demonstrates that the requirements of this  
 29 section have been or will be met. Upon the prospective purchaser's request, the  
 30 commissioner shall keep data provided by the purchaser confidential in accordance  
 31 with the requirements of **AS 38.05.035(a)(8)** [AS 38.05.035(a)(9)].

1 \* **Sec. 6.** AS 38.05.133(e) is amended to read:

2 (e) The commissioner may make a written request to a prospective licensee  
3 for additional information on the prospective licensee's proposal. The commissioner  
4 shall keep confidential information described in AS 38.05.035(a)(8)  
5 [AS 38.05.035(a)(9)] that is voluntarily provided if the prospective licensee has made  
6 a written request that the information remain confidential.

7 \* **Sec. 7.** AS 38.05.180(j) is amended to read:

8 (j) The commissioner

9 (1) may provide for modification of royalty on individual leases,  
10 leases unitized as described in (p) of this section, leases subject to an agreement  
11 described in (s) or (t) of this section, or interests unitized under AS 31.05

12 (A) to allow for production from an oil or gas field or pool if

13 (i) the oil or gas field or pool has been sufficiently  
14 delineated to the satisfaction of the commissioner;

15 (ii) the field or pool has not previously produced oil or  
16 gas for sale; and

17 (iii) oil or gas production from the field or pool would  
18 not otherwise be economically feasible;

19 (B) to prolong the economic life of an oil or gas field or pool  
20 as per barrel or barrel equivalent costs increase or as the price of oil or gas  
21 decreases, and the increase or decrease is sufficient to make future production  
22 no longer economically feasible; or

23 (C) to reestablish production of shut-in oil or gas that would  
24 not otherwise be economically feasible;

25 (2) may not grant a royalty modification unless the lessee or lessees  
26 requesting the change make a clear and convincing showing that a modification of  
27 royalty meets the requirements of this subsection and is in the best interests of the  
28 state;

29 (3) shall provide for an increase or decrease or other modification of  
30 the state's royalty share by a sliding scale royalty or other mechanism that shall be  
31 based on a change in the price of oil or gas and may also be based on other relevant

1 factors such as a change in production rate, projected ultimate recovery, development  
2 costs, and operating costs;

3 (4) may not grant a royalty reduction for a field or pool

4 (A) under (1)(A) of this subsection if the royalty modification  
5 for the field or pool would establish a royalty rate of less than five percent in  
6 amount or value of the production removed or sold from a lease or leases  
7 covering the field or pool;

8 (B) under (1)(B) or (1)(C) of this subsection if the royalty  
9 modification for the field or pool would establish a royalty rate of less than  
10 three percent in amount or value of the production removed or sold from a  
11 lease or leases covering the field or pool;

12 (5) may not grant a royalty reduction under this subsection without  
13 including an explicit condition that the royalty reduction is not assignable without the  
14 prior written approval, which may not be unreasonably withheld, by the  
15 commissioner; the commissioner shall, in the preliminary and final findings and  
16 determinations, set out the conditions under which the royalty reduction may be  
17 assigned;

18 (6) shall require the lessee or lessees to submit, with the application  
19 for the royalty reduction, financial and technical data that demonstrate that the  
20 requirements of this subsection are met; the commissioner

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

25 (B) shall keep the data confidential under AS 38.05.035(a)(8)  
26 [AS 38.05.035(a)(9)] at the request of the lessee or lessees making application  
27 for the royalty reduction; the confidential data may be disclosed by the  
28 commissioner to legislators and to the legislative auditor and as directed by  
29 the chair or vice-chair of the Legislative Budget and Audit Committee to the  
30 director of the division of legislative finance, the permanent employees of  
31 their respective divisions who are responsible for evaluating a royalty

1 reduction, and to agents or contractors of the legislative auditor or the  
2 legislative finance director who are engaged under contract to evaluate the  
3 royalty reduction, if they sign an appropriate confidentiality agreement;

4 (7) may

5 (A) require the lessee or lessees making application for the  
6 royalty reduction under (1)(A) of this subsection to pay for the services of an  
7 independent contractor, selected by the lessee or lessees from a list of  
8 qualified consultants compiled by the commissioner, to evaluate hydrocarbon  
9 development, production, transportation, and economics and to assist the  
10 commissioner in evaluating the application and financial and technical data;  
11 if, under this subparagraph, the commissioner requires payment for the  
12 services of an independent contractor, the total cost of the services to be paid  
13 for by the lessee or lessees may not exceed \$150,000 for each application, and  
14 the commissioner shall determine the relevant scope of the work to be  
15 performed by the contractor; selection of an independent contractor under this  
16 subparagraph is not subject to AS 36.30;

17 (B) with the mutual consent of the lessee or lessees making  
18 application for the royalty reduction under (1)(B) or (1)(C) of this subsection,  
19 request payment for the services of an independent contractor, selected from a  
20 list of qualified consultants to evaluate hydrocarbon development, production,  
21 transportation, and economics by the commissioner to assist the commissioner  
22 in evaluating the application and financial and technical data; if, under this  
23 subparagraph, the commissioner requires payment for the services of an  
24 independent contractor, the total cost of the services that may be paid for by  
25 the lessee or lessees may not exceed \$150,000 for each application, and the  
26 commissioner shall determine the relevant scope of the work to be performed  
27 by the contractor; selection of an independent contractor under this  
28 subparagraph is not subject to AS 36.30;

29 (8) shall make and publish a preliminary findings and determination  
30 on the royalty reduction application, give reasonable public notice of the preliminary  
31 findings and determination, and invite public comment on the preliminary findings

1 and determination during a 30-day period for receipt of public comment;

2 (9) shall offer to appear before the Legislative Budget and Audit  
3 Committee, on a day that is not earlier than 10 days and not later than 20 days after  
4 giving public notice under (8) of this subsection, to provide the committee a review of  
5 the commissioner's preliminary findings and determination on the royalty reduction  
6 application and administrative process; if the Legislative Budget and Audit  
7 Committee accepts the commissioner's offer, the committee shall give notice of the  
8 committee's meeting to all members of the legislature;

9 (10) shall make copies of the preliminary findings and determination  
10 available to

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

12 (B) the chairs of the legislature's standing committees on  
13 resources; and

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

16 (11) shall, within 30 days after the close of the public comment period  
17 under (8) of this subsection,

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

20 (B) make a final findings and determination; the  
21 commissioner's final findings and determination prepared under this  
22 subparagraph regarding a royalty reduction is final and not appealable to the  
23 court;

24 (C) transmit a copy of the final findings and determination to  
25 the lessee;

26 (D) with the applicant's consent, amend the applicant's lease or  
27 unitization agreement consistent with the commissioner's final decision; and

28 (E) make copies of the final findings and determination  
29 available to each person who submitted comment under (8) of this subsection  
30 and who has filed a request for the copies;

31 (12) is not limited by the provisions of AS 38.05.134(3) or (f) of this

1 section in the commissioner's determination under this subsection.

2 \* **Sec. 8.** AS 38.05.275(c) is amended to read:

3 (c) Subsection (b) of this section may not be construed to limit the director in  
4 the exercise of authority granted by AS 38.05.035(a)(11) [AS 38.05.035(a)(12)].

5 \* **Sec. 9.** AS 39.25.110 is amended by adding a new paragraph to read:

6 (42) oil and gas auditors performing

7 (A) production tax audits, and their immediate supervisors, in  
8 the Department of Revenue;

9 (B) royalty audits, including net profit share audits, and their  
10 immediate supervisors, in the Department of Natural Resources.

11 \* **Sec. 10.** AS 41.09.010(d) is amended to read:

12 (d) Data derived from drilling a stratigraphic test well or exploratory well that  
13 is provided to the commissioner under (c)(3) of this section shall be kept confidential  
14 for 24 months after receipt by the commissioner unless the owner of the well gives  
15 written permission to the state to release the well data at an earlier date, and,  
16 notwithstanding AS 31.05.035(c), confidentiality may not be extended beyond 24  
17 months. The provisions of AS 38.05.035(a)(8)(C) [AS 38.05.035(a)(9)(C)] apply to  
18 other data provided to the commissioner under (c)(3) of this section, except that the  
19 commissioner, under appropriate confidentiality provisions and without preference or  
20 discrimination, may display to all interested third parties, but may not distribute or  
21 transfer in hard copy or electronic form, those data with respect to all land if the  
22 commissioner determines that the limited disclosure is necessary to further the  
23 interest of the state in evaluating or developing its land.

24 \* **Sec. 11.** AS 43.05.230(a) is amended to read:

25 (a) It is unlawful for a current or former officer, employee, or agent of the  
26 state to divulge the amount of income or the particulars set out or disclosed in a report  
27 or return made under this title, except

28 (1) in connection with official investigations or proceedings of the  
29 department, whether judicial or administrative, involving taxes due under this title;

30 (2) in connection with official investigations or proceedings of the  
31 child support enforcement agency, whether judicial or administrative, involving child

1 support obligations imposed or imposable under AS 25 or AS 47;

2 (3) as provided in AS 38.05.036 pertaining to audit functions of the  
3 Department of Natural Resources;

4 (4) as provided in AS 43.05.405 - 43.05.499; and

5 (5) as otherwise provided in this section **or AS 43.55.890.**

6 \* **Sec. 12.** AS 43.05.230(h) is amended to read:

7 (h) The commissioner shall, upon request, furnish to the Department of  
8 Natural Resources copies of tax returns, reports, **and other** documents filed under  
9 **AS 43.55 or** AS 43.65, and the Department of Revenue's determinations and  
10 workpapers **under those chapters.** The Department of Natural Resources shall  
11 maintain the confidentiality that the Department of Revenue is required to extend to  
12 the returns, reports, documents, determinations, and workpapers furnished to the  
13 Department of Natural Resources under this subsection.

14 \* **Sec. 13.** AS 43.55.023(i) is amended to read:

15 (i) For the purposes of this section,

16 (1) a producer's or explorer's transitional investment expenditures are  
17 the sum of the expenditures the producer or explorer incurred after March 31, 2001,  
18 and before April 1, 2006, that would be qualified capital expenditures if they were  
19 incurred after March 31, 2006, less the sum of the payments or credits the producer or  
20 explorer received before April 1, 2006, for the sale or other transfer of assets,  
21 including geological, geophysical, or well data or interpretations, acquired by the  
22 producer or explorer as a result of expenditures the producer or explorer incurred  
23 before April 1, 2006, that would be qualified capital expenditures, if they were  
24 incurred after March 31, 2006;

25 (2) a producer or explorer **that did not have commercial production**  
26 **of oil or gas from a lease or property in the state before January 1, 2008,** may  
27 elect to take a tax credit against a tax **levied by** [DUE UNDER] AS 43.55.011(e) in  
28 the amount of 20 percent of the producer's or explorer's transitional investment  
29 expenditures, but only to the extent that the amount does not exceed 1/10 of the  
30 producer's or explorer's qualified capital expenditures that **were incurred after**  
31 **March 31, 2006, and before January 1, 2008** [ARE INCURRED DURING THE

1 CALENDAR YEAR FOR WHICH THE CREDIT IS TAKEN];

2 (3) a producer or explorer may not take a tax credit for a transitional  
3 investment expenditure

4 (A) for any calendar year after [THE LATER OF

5 (i)] 2013; [OR

6 (ii) THE SIXTH CALENDAR YEAR AFTER THE  
7 CALENDAR YEAR FOR WHICH THE PRODUCER FIRST  
8 APPLIES A CREDIT UNDER THIS SUBSECTION AGAINST A  
9 TAX DUE UNDER AS 43.55.011(e), IF THE PRODUCER DID NOT  
10 HAVE COMMERCIAL PRODUCTION OF OIL OR GAS FROM A  
11 LEASE OR PROPERTY IN THE STATE BEFORE APRIL 1, 2006;]

12 (B) more than once; or

13 (C) if a credit for that expenditure was taken under  
14 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025;

15 (4) notwithstanding (d), (e), and (g) of this section, a producer or  
16 explorer may not transfer a tax credit or obtain a transferable tax credit certificate for  
17 a transitional investment expenditure.

18 \* **Sec. 14.** AS 43.55.030(a) is amended to read:

19 (a) **A producer that produces oil or gas from a lease or property in the**  
20 **state during a calendar year, whether or not any tax payment is due under**  
21 **AS 43.55.020(a) for that oil or gas,** [THE PERSON PAYING THE TAX] shall file  
22 with the department on March 31 of the **following** year [FOLLOWING THE  
23 CALENDAR YEAR FOR WHICH THE TAX WAS LEVIED] a statement, under  
24 oath, in a form prescribed by the department, giving, with other information required,  
25 the following:

26 (1) a description of each lease or property from which [THE] oil **or**  
27 [AND] gas **was** [WERE] produced, by name, legal description, lease number, or  
28 accounting codes assigned by the department;

29 (2) the names of the producer and, **if different,** the person paying the  
30 tax, **if any;**

31 (3) the gross amount of oil and the gross amount of gas produced from

1 each lease or property, and the percentage of the gross amount of oil and gas owned  
2 by **the** [EACH] producer [FOR WHOM THE TAX IS PAID];

3 (4) the gross value at the point of production of the oil and of the gas  
4 produced from each lease or property owned by **the** [EACH] producer **and the costs**  
5 **of transportation of the oil and gas** [FOR WHOM THE TAX IS PAID];

6 (5) the name of the first purchaser and the price received for the oil  
7 and for the gas, unless relieved from this requirement in whole or in part by the  
8 department; [AND]

9 (6) the producer's **qualified capital expenditures, as defined in**  
10 **AS 43.55.023, other** lease expenditures [AND ADJUSTMENTS AS  
11 CALCULATED] under **AS 43.55.165, and adjustments or other payments or**  
12 **credits under AS 43.55.170;**

13 **(7) the production tax values of the oil and gas under**  
14 **AS 43.55.160;**

15 **(8) any claims for tax credits to be applied; and**

16 **(9) calculations showing the amounts, if any, that were or are due**  
17 **under AS 43.55.020(a) and interest on any underpayment or overpayment**  
18 **[AS 43.55.160 - 43.55.170].**

19 \* **Sec. 15.** AS 43.55.030(d) is amended to read:

20 (d) Reports **required under this section** [BY OR ON BEHALF OF THE  
21 PRODUCER] are delinquent the first day following the day the report is due. **The**  
22 **person required to file the report is liable for a penalty, as determined by the**  
23 **department under standards adopted in regulation by the department, of not**  
24 **more than \$1,000 for each day the person fails to file the report at the time**  
25 **required. The penalty is in addition to the penalties in AS 43.05.220 and**  
26 **43.05.290 and is assessed, collected, and paid in the same manner as a tax**  
27 **deficiency under this title. In this subsection, "report" includes a statement.**

28 \* **Sec. 16.** AS 43.55.030 is amended by adding new subsections to read:

29 (e) An explorer or producer that incurs a lease expenditure under  
30 AS 43.55.165 or receives a payment or credit under AS 43.55.170 during a calendar  
31 year but does not produce oil or gas from a lease or property in the state during the

1 calendar year shall file with the department on March 31 of the following year a  
 2 statement, under oath, in a form prescribed by the department, giving, with other  
 3 information required, the following:

4 (1) the producer's qualified capital expenditures, as defined in  
 5 AS 43.55.023, other lease expenditures under AS 43.55.165, and adjustments or other  
 6 payments or credits under AS 43.55.170; and

7 (2) if the explorer or producer receives a payment or credit under  
 8 AS 43.55.170, calculations showing whether the explorer or producer is liable for a  
 9 tax under AS 43.55.160(d) or 43.55.170(b) and, if so, the amount.

10 (f) The department may require a producer, an explorer, or an operator of a  
 11 lease or property to file monthly reports, as applicable, of

12 (1) the amounts and gross value at the point of production of oil and  
 13 gas produced;

14 (2) transportation costs of the oil and gas;

15 (3) any unscheduled interruption of, or reduction in the rate of, oil or  
 16 gas production;

17 (4) lease expenditures and adjustments under AS 43.55.165 and  
 18 43.55.170;

19 (5) joint interest billings;

20 (6) contracts for the sale or transportation of oil or gas;

21 (7) information and calculations used in determining monthly  
 22 installment payments of estimated tax under AS 43.55.020(a); and

23 (8) other records and information the department considers necessary  
 24 for the administration of this chapter.

25 \* **Sec. 17.** AS 43.55.040 is amended to read:

26 **Sec. 43.55.040. Powers of Department of Revenue.** Except as provided in  
 27 AS 43.05.405 - 43.05.499, the department may

28 (1) require a person engaged in production and the agent or employee  
 29 of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil  
 30 or gas to furnish, whether by the filing of regular statements or reports or otherwise,  
 31 additional information that is considered by the department as necessary to compute

1 the amount of the tax; notwithstanding any contrary provision of law, the disclosure  
 2 of additional information under this paragraph to the producer obligated to pay the tax  
 3 does not violate AS 40.25.100(a) or AS 43.05.230(a); before disclosing information  
 4 under this paragraph that is otherwise required to be held confidential under  
 5 AS 40.25.100(a) or AS 43.05.230(a), the department shall

6 (A) provide the person that furnished the information a  
 7 reasonable opportunity to be heard regarding the proposed disclosure and the  
 8 conditions to be imposed under (B) of this paragraph; and

9 (B) impose appropriate conditions limiting

10 (i) access to the information to those legal counsel,  
 11 consultants, employees, officers, and agents of the producer who have  
 12 a need to know that information for the purpose of determining or  
 13 contesting the producer's tax obligation; and

14 (ii) the use of the information to use for that purpose;

15 (2) examine the books, records, and files of **the** [SUCH A] person;

16 (3) conduct hearings and compel the attendance of witnesses and the  
 17 production of books, records, and papers of any person; [AND]

18 (4) make an investigation or hold an inquiry that is considered  
 19 necessary to a disclosure of the facts as to

20 (A) the amount of production from any oil or gas location, or  
 21 of a company or other producer of oil or gas; and

22 (B) the rendition of the oil and gas for taxing purposes;

23 **(5) require a producer, an explorer, or an operator of a lease or**  
 24 **property to file reports and copies of records that the department considers**  
 25 **necessary to forecast state revenue under this chapter; in the case of reports and**  
 26 **copies of records relating to proposed, expected, or approved unit expenditures**  
 27 **for a unit for which one or more working interest owners other than the**  
 28 **operator have authority to approve unit expenditures, the required reports and**  
 29 **copies of records are limited to those reports or copies of records that constitute**  
 30 **or disclose communications between the operator and the working interest**  
 31 **owners relating to unit budget matters; and**

1                    **(6) assess against a person required under this section to file a**  
 2                    **report, statement, or other document a penalty, as determined by the**  
 3                    **department under standards adopted in regulation by the department, of not**  
 4                    **more than \$1,000 for each day the person fails to file the report, statement, or**  
 5                    **other document at the time required; the penalty is in addition to the penalties in**  
 6                    **AS 43.05.220 and 43.05.290 and is assessed, collected, and paid in the same**  
 7                    **manner as a tax deficiency under this title.**

8                    \* **Sec. 18.** AS 43.55.110 is amended by adding new subsections to read:

9                    (e) The department may require that returns, statements, reports, notifications,  
 10                    and applications filed under this chapter be filed electronically in a form and manner  
 11                    approved or prescribed by the department.

12                    (f) The department may require that payments required under this chapter be  
 13                    made electronically in a form and manner approved or prescribed by the department.

14                    (g) Notwithstanding AS 44.62, the department may issue, for the information  
 15                    and guidance of producers, explorers, and other interested persons, advisory bulletins  
 16                    stating the department's interpretation of provisions of this chapter and of regulations  
 17                    adopted under this chapter. Unless otherwise provided by the department by  
 18                    regulation, interpretations stated in the advisory bulletins are not binding on the  
 19                    department or others.

20                    \* **Sec. 19.** AS 43.55.165(a) is repealed and reenacted to read:

21                    (a) For purposes of this chapter, a producer's lease expenditures for a calendar  
 22                    year are

23                    (1) costs, other than items listed in (e) of this section, that are

24                    (A) incurred by the producer during the calendar year after  
 25                    March 31, 2006, to explore for, develop, or produce oil or gas deposits located  
 26                    within the producer's leases or properties in the state or, in the case of land in  
 27                    which the producer does not own an operating right, operating interest, or  
 28                    working interest, to explore for oil or gas deposits within other land in the  
 29                    state; and

30                    (B) allowed by the department by regulation, based on the  
 31                    department's determination that the costs satisfy the following three

1 requirements:

2 (i) the costs must be incurred upstream of the point of  
3 production of oil and gas;

4 (ii) the costs must be ordinary and necessary costs of  
5 exploring for, developing, or producing, as applicable, oil or gas  
6 deposits; and

7 (iii) the costs must be direct costs of exploring for,  
8 developing, or producing, as applicable, oil or gas deposits; and

9 (2) a reasonable allowance for that calendar year, as determined under  
10 regulations adopted by the department, for overhead expenses that are directly related  
11 to exploring for, developing, or producing, as applicable, the oil or gas deposits.

12 \* **Sec. 20.** AS 43.55.165(b) is amended to read:

13 (b) For purposes of (a) of this section,

14 (1) direct costs include

15 (A) an expenditure, when incurred, to acquire an item if the  
16 acquisition cost is otherwise a direct cost, notwithstanding that the  
17 expenditure may be required to be capitalized rather than treated as an  
18 expense for financial accounting or federal income tax purposes;

19 (B) payments of or in lieu of property taxes, sales and use  
20 taxes, motor fuel taxes, and excise taxes;

21 [(C) A REASONABLE ALLOWANCE, AS DETERMINED  
22 UNDER REGULATIONS ADOPTED BY THE DEPARTMENT, FOR  
23 OVERHEAD EXPENSES DIRECTLY RELATED TO EXPLORING FOR,  
24 DEVELOPING, AND PRODUCING OIL OR GAS DEPOSITS LOCATED  
25 WITHIN LEASES OR PROPERTIES OR OTHER LAND IN THE STATE;]

26 (2) an activity does not need to be physically located on, near, or  
27 within the premises of the lease or property within which an oil or gas deposit being  
28 explored for, developed, or produced is located in order for the cost of the activity to  
29 be a cost upstream of the point of production of the oil or gas;

30 **(3) in determining whether costs are lease expenditures, the**  
31 **department shall consider, among other factors, the**

1                    **(A) typical industry practices and standards in the state**  
 2                    **that determine the costs, other than items listed in (e) of this section, that**  
 3                    **an operator is allowed to bill a producer that is not the operator, under**  
 4                    **unit operating agreements or similar operating agreements that were in**  
 5                    **effect before December 2, 2005, and were subject to negotiation with at**  
 6                    **least one producer with substantial bargaining power, other than the**  
 7                    **operator; and**

8                    **(B) standards adopted by the Department of Natural**  
 9                    **Resources that determine the costs, other than items listed in (e) of this**  
 10                   **section, that a lessee is allowed to deduct from revenue in calculating net**  
 11                   **profits under a lease issued under AS 38.05.180(f)(3)(B), (D), or (E).**

12 \* **Sec. 21.** AS 43.55.165(e) is amended to read:

13                    (e) For purposes of this section, lease expenditures do not include

14                                    (1) depreciation, depletion, or amortization;

15                                    (2) oil or gas royalty payments, production payments, lease profit  
 16 shares, or other payments or distributions of a share of oil or gas production, profit, or  
 17 revenue;

18                                    (3) taxes based on or measured by net income;

19                                    (4) interest or other financing charges or costs of raising equity or  
 20 debt capital;

21                                    (5) acquisition costs for a lease or property or exploration license;

22                                    (6) costs arising from fraud, wilful misconduct, [OR] gross  
 23 negligence, **violation of law, or failure to comply with an obligation under a lease,**  
 24 **permit, or license issued by the state or federal government;**

25                                    (7) fines or penalties imposed by law;

26                                    (8) costs of arbitration, litigation, or other dispute resolution activities  
 27 that involve the state or concern the rights or obligations among owners of interests  
 28 in, or rights to production from, one or more leases or properties or a unit;

29                                    (9) costs incurred in organizing a partnership, joint venture, or other  
 30 business entity or arrangement;

31                                    (10) amounts paid to indemnify the state; the exclusion provided by

1 this paragraph does not apply to the costs of obtaining insurance or a surety bond  
2 from a third-party insurer or surety;

3 (11) surcharges levied under AS 43.55.201 or 43.55.300;

4 (12) for a transaction that is an internal transfer or is otherwise not an  
5 arm's length transaction, expenditures incurred that are in excess of fair market value;

6 (13) an expenditure incurred to purchase an interest in any  
7 corporation, partnership, limited liability company, business trust, or any other  
8 business entity, whether or not the transaction is treated as an asset sale for federal  
9 income tax purposes;

10 (14) a tax levied under AS 43.55.011;

11 (15) [THE PORTION OF] costs incurred for dismantlement, removal,  
12 surrender, or abandonment of a facility, pipeline, well pad, platform, or other  
13 structure, or for the restoration of a lease, field, unit, area, **tract of land**, body of  
14 water, or right-of-way in conjunction with dismantlement, removal, surrender, or  
15 abandonment [, THAT IS ATTRIBUTABLE TO PRODUCTION OF OIL OR GAS  
16 OCCURRING BEFORE APRIL 1, 2006; THE PORTION IS CALCULATED AS A  
17 RATIO OF THE AMOUNT OF OIL AND GAS PRODUCTION, IN BARRELS OF  
18 OIL EQUIVALENT, ASSOCIATED WITH THE FACILITY, PIPELINE, WELL  
19 PAD, PLATFORM, OTHER STRUCTURE, LEASE, FIELD, UNIT, AREA, BODY  
20 OF WATER, OR RIGHT-OF-WAY OCCURRING BEFORE APRIL 1, 2006, TO  
21 THE TOTAL AMOUNT OF OIL AND GAS PRODUCTION, IN BARRELS OF  
22 OIL EQUIVALENT, ASSOCIATED WITH THAT FACILITY, PIPELINE, WELL  
23 PAD, PLATFORM, OTHER STRUCTURE, LEASE, FIELD, UNIT, AREA, BODY  
24 OF WATER, OR RIGHT-OF-WAY THROUGH THE END OF THE CALENDAR  
25 MONTH BEFORE COMMENCEMENT OF THE DISMANTLEMENT,  
26 REMOVAL, SURRENDER, OR ABANDONMENT]; a cost is not excluded under  
27 this paragraph if the dismantlement, removal, surrender, or abandonment for which  
28 the cost is incurred is undertaken for the purpose of replacing, renovating, or  
29 improving the facility, pipeline, well pad, platform, or other structure; [FOR THE  
30 PURPOSES OF THIS PARAGRAPH, "BARREL OF OIL EQUIVALENT" MEANS

31 (A) IN THE CASE OF OIL, ONE BARREL;

1 (B) IN THE CASE OF GAS, 6,000 CUBIC FEET;]

2 (16) costs incurred for containment, control, cleanup, or removal in  
3 connection with any unpermitted release of oil or a hazardous substance and any  
4 liability for damages imposed on the producer or explorer for that unpermitted  
5 release; this paragraph does not apply to the cost of developing and maintaining an oil  
6 discharge prevention and contingency plan under AS 46.04.030;

7 (17) costs incurred to satisfy a work commitment under an exploration  
8 license under AS 38.05.132;

9 (18) that portion of expenditures, that would otherwise be qualified  
10 capital expenditures, as defined in AS 43.55.023 [AS 43.55.023(k)], incurred during a  
11 calendar year that are less than the product of \$0.30 multiplied by the total taxable  
12 production from each lease or property, in BTU equivalent barrels, during that  
13 calendar year, except that, when a portion of a calendar year is subject to this  
14 provision, the expenditures and volumes shall be prorated within that calendar year;

15 (19) costs incurred for repair, replacement, or deferred  
16 maintenance of a facility, a pipeline, a structure, or equipment, other than a well,  
17 that results in or is undertaken in response to a failure, problem, or event that  
18 results in an unscheduled interruption of, or reduction in the rate of, oil or gas  
19 production; or costs incurred for repair, replacement, or deferred maintenance  
20 of a facility, a pipeline, a structure, or equipment, other than a well, that is  
21 undertaken in response to, or is otherwise associated with, an unpermitted  
22 release of a hazardous substance or of gas; however, costs under this paragraph  
23 that would otherwise constitute lease expenditures under (a) of this section may  
24 be treated as lease expenditures if the department determines that the repair or  
25 replacement is solely necessitated by an act of war, by an unanticipated grave  
26 natural disaster or other natural phenomenon of an exceptional, inevitable, and  
27 irresistible character, the effects of which could not have been prevented or  
28 avoided by the exercise of due care or foresight, or by an intentional or negligent  
29 act or omission of a third party, other than a party or its agents in privity of  
30 contract with, or employed by, the producer or an operator acting for the  
31 producer, but only if the producer or operator, as applicable, exercised due care

1 in operating and maintaining the facility, pipeline, structure, or equipment, and  
 2 took reasonable precautions against the act or omission of the third party and  
 3 against the consequences of the act or omission; in this paragraph,

4 (A) "costs incurred for repair, replacement, or deferred  
 5 maintenance of a facility, a pipeline, a structure, or equipment" includes  
 6 costs to dismantle and remove the facility, pipeline, structure, or  
 7 equipment that is being replaced;

8 (B) "hazardous substance" has the meaning given in  
 9 AS 46.03.826;

10 (C) "replacement" includes renovation or improvement;

11 (20) costs incurred to construct, acquire, or operate a refinery or  
 12 crude oil topping plant, regardless of whether the products of the refinery or  
 13 topping plant are used in oil or gas exploration, development, or production  
 14 operations; however, if a producer owns a refinery or crude oil topping plant  
 15 that is located on or near the premises of the producer's lease or property in the  
 16 state and that processes the producer's oil produced from that lease or property  
 17 into a product that the producer uses in the operation of the lease or property in  
 18 drilling for or producing oil or gas, the producer's lease expenditures include the  
 19 amount calculated by subtracting from the fair market value of the product used  
 20 the prevailing value, as determined under AS 43.55.020(f), of the oil that is  
 21 processed.

22 \* Sec. 22. AS 43.55.170(a) is amended to read:

23 (a) A [UNLESS THE PAYMENT OR CREDIT HAS ALREADY BEEN  
 24 SUBTRACTED IN CALCULATING BILLABLE OR BILLED COSTS UNDER  
 25 AS 43.55.165(c) OR (d), A] producer's lease expenditures under AS 43.55.165 must  
 26 be adjusted by subtracting payments or credits, other than tax credits, received by the  
 27 producer or by an operator acting for the producer for

28 (1) the use by another person of a production facility in which the  
 29 producer has an ownership interest or the management by the producer of a  
 30 production facility under a management agreement providing for the producer to  
 31 receive a management fee;

1 (2) a reimbursement or similar payment that offsets the producer's  
 2 lease expenditures, including an insurance recovery from a third-party insurer and a  
 3 payment from the state or federal government for reimbursement of the producer's  
 4 upstream costs, including costs for gathering, separating, cleaning, dehydration,  
 5 compressing, or other field handling associated with the production of oil or gas  
 6 upstream of the point of production;

7 (3) the sale or other transfer of

8 (A) an asset, including geological, geophysical, or well data or  
 9 interpretations, acquired by the producer as a result of a lease expenditure or  
 10 an expenditure that would be a lease expenditure if it were incurred after  
 11 March 31, 2006; for purposes of this subparagraph,

12 (i) if a producer removes from the state, for use outside  
 13 the state, an asset described in this subparagraph, the value of the asset  
 14 at the time it is removed is considered a payment received by the  
 15 producer for sale or transfer of the asset;

16 (ii) for a transaction that is an internal transfer or is  
 17 otherwise not an arm's length transaction, if the sale or transfer of the  
 18 asset is made for less than fair market value, the amount subtracted  
 19 must be the fair market value; and

20 (B) oil or gas

21 (i) that is not considered produced from a lease or  
 22 property under AS 43.55.020(e); and

23 (ii) the cost of acquiring which is a lease expenditure  
 24 incurred by the person that acquires the oil or gas.

25 \* **Sec. 23.** AS 43.55 is amended by adding a new section to article 4 to read:

26 **Sec. 43.55.890. Disclosure of tax information.** Notwithstanding any contrary  
 27 provision of AS 40.25.100, and regardless of whether the information is considered  
 28 under AS 43.05.230(e) to constitute statistics classified to prevent the identification of  
 29 particular returns or reports, the department may publish the following information  
 30 under this chapter, if aggregated among three or more producers or explorers,  
 31 showing by month or calendar year and by lease or property, unit, or area of the state:

- 1 (1) the amount of oil or gas production;
- 2 (2) the amount of taxes levied under this chapter or paid under this
- 3 chapter;
- 4 (3) the effective tax rates under this chapter;
- 5 (4) the gross value of oil or gas at the point of production;
- 6 (5) the transportation costs for oil or gas;
- 7 (6) qualified capital expenditures under AS 43.55.023(k);
- 8 (7) exploration expenditures under AS 43.55.025;
- 9 (8) production tax values of oil or gas under AS 43.55.160;
- 10 (9) lease expenditures under AS 43.55.165;
- 11 (10) adjustments to lease expenditures under AS 43.55.170;
- 12 (11) tax credits applicable or potentially applicable against taxes
- 13 levied by this chapter.

14 \* **Sec. 24.** AS 43.55.900 is amended by adding new paragraphs to read:

- 15 (22) "producer" means an owner of an operating right, operating
- 16 interest, or working interest in a mineral interest in oil or gas;
- 17 (23) "unit" means a group of tracts of land that is
- 18 (A) subject to a cooperative or a unit plan of development or
- 19 operation that has been certified by the commissioner of natural resources
- 20 under AS 38.05.180(p);
- 21 (B) subject to a cooperative or a unit plan of development or
- 22 operation that has been certified by the United States Secretary of the Interior
- 23 under 30 U.S.C. 226(m);
- 24 (C) subject to an agreement of the owners of interests in the
- 25 tracts of land to validly integrate their interests to provide for the unitized
- 26 management, development, and operation of the tracts of land as a unit, within
- 27 the meaning of AS 31.05.110(a); or
- 28 (D) within the unit area of a unit created by order of the
- 29 Alaska Oil and Gas Conservation Commission under AS 31.05.110(b).

30 \* **Sec. 25.** AS 43.55.165(c) and 43.55.165(d) are repealed.

31 \* **Sec. 26.** AS 43.55.011(l) is repealed.

1     \* **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3           APPLICABILITY. (a) Sections 21, 22, and 25 of this Act apply to oil and gas  
4 produced after March 31, 2006.

5           (b) Sections 19, 20, and 26 of this Act apply to oil and gas produced after  
6 December 31, 2007.

7           (c) Sections 14 and 16 of this Act apply to statements and reports under  
8 AS 43.55.030(a), as amended by sec. 14 of this Act, and AS 43.55.030(e) and (f), as added  
9 by sec. 16 of this Act, required to be filed after December 31, 2007.

10    \* **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12           TRANSITION: ASSIGNMENT OF OIL AND GAS AUDITORS IN THE  
13 DEPARTMENT OF REVENUE AND DEPARTMENT OF NATURAL RESOURCES.  
14 Notwithstanding any contrary provision of law, employees employed as oil and gas auditors  
15 performing production tax audits or as their immediate supervisors in the Department of  
16 Revenue and employees employed as oil and gas auditors performing royalty audits,  
17 including net profit share audits, or as their immediate supervisors in the Department of  
18 Natural Resources are assigned to the exempt service in accordance with AS 39.25.110(42),  
19 added by sec. 9 of this Act, and may not be included in the general government or  
20 supervisory collective bargaining units of state employees except as provided in this section.  
21 All oil and gas auditors performing production tax audits or royalty audits and their  
22 immediate supervisors hired before the effective date of sec. 9 of this Act have the option of  
23 (1) continuing in the general government or supervisory collective bargaining units and being  
24 subject to their respective collective bargaining agreements; or (2) being removed from those  
25 bargaining units. Those employees have 90 days from the effective date of sec. 9 of this Act  
26 to exercise the option to continue in the collective bargaining units. The option taken under  
27 this section by the employee is irrevocable. The employees choosing to be removed from  
28 those bargaining units are removed after any notice period required by a collective  
29 bargaining agreement.

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

1           TRANSITION: RETROACTIVITY OF REGULATIONS. Notwithstanding any  
2 contrary provision of AS 44.62.240,

3                   (1) if the Department of Revenue expressly designates in the regulation that  
4 the regulation applies retroactively to that date, a regulation adopted by the Department of  
5 Revenue to implement, interpret, make specific, or otherwise carry out

6                           (A) secs. 21, 22, and 25 of this Act may apply retroactively to April 1,  
7 2006;

8                           (B) secs. 13, 14, 16, 19, 20, and 26 of this Act may apply retroactively  
9 to January 1, 2008;

10                   (2) a regulation adopted by the Department of Natural Resources to  
11 implement, interpret, make specific, or otherwise carry out statutory provisions for the  
12 administration of oil and gas leases issued under AS 38.05.180(f)(3)(B), (D), or (E), to the  
13 extent the regulation deals with the treatment of oil and gas production taxes in determining  
14 net profits under those leases, may apply retroactively to April 1, 2006, if the Department of  
15 Natural Resources expressly designates in the regulation that the regulation applies  
16 retroactively to that date.

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

19           TRANSITION: REGULATIONS. The Department of Natural Resources and the  
20 Department of Revenue may proceed to adopt regulations to implement this Act. The  
21 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
22 effective date of the law implemented by the regulation.

23       \* **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to  
24 read:

25           RETROACTIVITY OF CERTAIN PROVISIONS OF THIS ACT. Sections 21, 22,  
26 25, and 29 of this Act are retroactive to April 1, 2006.

27       \* **Sec. 32.** Sections 13, 14, 16, 19, 20, and 26 of this Act take effect January 1, 2008.

28       \* **Sec. 33.** Except as provided in sec. 32 of this Act, this Act takes effect immediately under  
29 AS 01.10.070(c).