

**CS FOR SENATE BILL NO. 309(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/10/10

Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act amending and extending the exploration and development incentive tax credit  
2 under the Alaska Net Income Tax Act for operators and working interest owners  
3 directly engaged in the exploration for and development of gas from a lease or property  
4 in the state; relating to a credit against the tax on the production of oil and gas for a  
5 qualified capital expenditure and for certain losses and expenditures; providing a credit  
6 against the tax on the production of oil and gas for drilling certain exploration wells in  
7 the Cook Inlet sedimentary basin; providing for an effective date by amending the  
8 effective date for sec. 2, ch. 61, SLA 2003; and providing for an effective date."

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

10 \* **Section 1.** AS 43.20.043(a) is amended to read:

11 (a) Subject to the terms and conditions of this section, and in addition to any  
12 other credit authorized to the taxpayer by this chapter, a taxpayer that is an operator or

1 working interest owner directly engaging in the exploration for and development of  
 2 gas may apply as a credit against the state tax liability that may be imposed on the  
 3 taxpayer under this chapter,

4 **(1)** for a tax year beginning after December 31, 2002, **and before**  
 5 **January 1, 2010,**

6 **(A)** [(1)] 10 percent of the taxpayer's qualified capital  
 7 investment; and

8 **(B)** [(2)] 10 percent of the annual cost incurred by the taxpayer  
 9 for qualified services in the state during each tax year for which a credit is  
 10 allowable for a qualified capital investment **for any gas reserve of the**  
 11 **taxpayer or for each year that qualified costs are incurred for a gas**  
 12 **reserve for which the taxpayer previously elected to claim a credit(A) of**  
 13 **this paragraph; and**

14 **(2)** for a tax year beginning after December 31, 2009,

15 **(A)** **25 percent of the taxpayer's qualified capital**  
 16 **investment; and**

17 **(B)** **25 percent of the annual cost incurred by the taxpayer**  
 18 **for qualified services in the state during each tax year for which a credit is**  
 19 **allowable for a qualified capital investment for any gas reserve of the**  
 20 **taxpayer or for each year that qualified costs are incurred for a gas**  
 21 **reserve for which the taxpayer previously elected to claim a credit under**  
 22 **(A) of this paragraph** [UNDER (1) OF THIS SUBSECTION].

23 \* **Sec. 2.** AS 43.20.043(b) is amended to read:

24 (b) Expenditures qualifying for the taxpayer's qualified investment credit  
 25 under **(a)(1)(A) or (a)(2)(A)** [(a)(1)] of this section must be

26 (1) cash expenditures or binding payment agreements entered into after

27 **(A)** June 30, 2003, **and before January 1, 2010, if the claim**  
 28 **of the credit is made under (a)(1)(A) of this section; or**

29 **(B)** **December 31, 2009, if the claim of the credit is made**  
 30 **under (a)(2)(A) of this section;** and

31 (2) made for assets first placed in service in the state in or before the

1 tax year in which the credit is claimed through the date the

2 (A) wells [RESERVES] produce gas for sale and delivery; for  
 3 purposes of this subparagraph [PARAGRAPH], "placed in service in the  
 4 state" means that the first use of the qualified investment is in this state; if the  
 5 property on which the claim of the credit is based has been used elsewhere in  
 6 the tax year of acquisition and is brought to this state during that year or a  
 7 subsequent year, the property does not qualify for the investment credit; or

8 (B) a gas well is determined not to be capable of production  
 9 in commercial quantities.

10 \* **Sec. 3.** AS 43.20.043(c) is amended to read:

11 (c) The credit each [PER] tax year allowed by (a) of this section may not  
 12 exceed [50 PERCENT OF] the taxpayer's total tax liability under this chapter, but  
 13 shall be calculated before the application of any other credits allowed under this  
 14 chapter. An unused portion of the credit for the tax year

15 (1) may be carried forward into one or more of the following tax years,  
 16 except that the unused credit from one tax year may not be carried forward for more  
 17 than five following tax years;

18 (2) shall be applied to the taxpayer's tax liability under this chapter  
 19 during the following tax year before allowance of a credit allowed by (a) of this  
 20 section for that following tax year.

21 \* **Sec. 4.** AS 43.20.043(e) is amended to read:

22 (e) A taxpayer entitled to a credit under this section

23 (1) may not convey, assign, or transfer the credit to another taxpayer or  
 24 business entity unless the conveyance, assignment, or transfer of the credit is part of  
 25 the conveyance, assignment, or transfer of the taxpayer's business;

26 (2) forfeits the credit to which the taxpayer is entitled during the tax  
 27 year and any carryover of it under (c) of this section, but does not forfeit the portion of  
 28 the credit that accrued in a previous taxable year that may be carried over under (c) of  
 29 this section, if the taxpayer

30 (A) disposes of the qualified capital investment;

31 (B) takes the qualified investment out of service; or

1 (C) transfers the qualified investment out of this state;

2 **(3) may not include in any rate base for a regulated facility**  
 3 **submitted to a regulatory agency charged with determining an appropriate tariff**  
 4 **the cost of any qualified capital investment or qualified service that has been**  
 5 **offset by receipt of a credit under this chapter.**

6 \* **Sec. 5.** AS 43.20.043(g) is amended to read:

7 (g) A taxpayer **that** [WHO] obtains a credit **for a qualified capital**  
 8 **investment or cost incurred for qualified services** under this section may not **also**  
 9 claim a tax credit or royalty modification **for the same qualified capital investment**  
 10 **or cost incurred for qualified services under AS 38.05.180(i), AS 41.09.010,**  
 11 **AS 43.55.023, or 43.55.025** [PROVIDED FOR UNDER ANY OTHER TITLE].  
 12 However, a taxpayer may **elect not to obtain** [, AT THE TAXPAYER'S ELECTION,  
 13 FORGO] a credit under this section in order [TO CONTINUE] to qualify for a credit  
 14 provided **under AS 38.05.180(i), AS 41.09.010, AS 43.55.023, or 43.55.025** [FOR IN  
 15 ANOTHER TITLE].

16 \* **Sec. 6.** AS 43.20.043(i)(1) is amended to read:

17 (1) "qualified capital investment" means a cash expenditure or binding  
 18 payment agreement, as described in (b)(1) of this section, for real property or tangible  
 19 personal property used in this state in the exploration and development of **any** gas  
 20 **reserve regardless of whether there has been commercial production in the area**  
 21 **or whether the exploration and development activity results in the production of**  
 22 **gas or a well not capable of production in commercial quantities** [RESERVES IN  
 23 A GAS RESERVOIR FOR WHICH THERE HAS NOT BEEN COMMERCIAL  
 24 PRODUCTION IF THE RESERVES PRODUCE GAS FOR SALE AND  
 25 DELIVERY]; in this paragraph, "property" includes

26 (A) property used in the operation or maintenance of facilities  
 27 for exploration or development of gas;

28 (B) property that is placed in use under a capitalized lease or an  
 29 operating lease; and

30 (C) the following property used for the exploration and  
 31 development of gas:

1 (i) machinery, appliances, supplies, and equipment;

2 (ii) drilling rigs, wells, gathering lines and transmission  
3 lines, pumping stations, compressor stations, power plants **designed**  
4 **for field operations, gas processing plants, and gas treatment**  
5 **plants, but not including liquefied natural gas or manufacturing**  
6 **plants** [, TOPPING PLANTS, AND PROCESSING UNITS];

7 (iii) roads, docks and other port facilities, and helicopter  
8 pads;

9 (iv) maintenance equipment and facilities, and  
10 maintenance camps and other related facilities; and

11 (v) communications facilities owned by a person whose  
12 principal business in the state is the exploration for or development of  
13 gas and whose operation of the communications facilities directly  
14 relates to the conduct of that business;

15 \* **Sec. 7.** AS 43.20.043 is amended by adding a new subsection to read:

16 (j) A taxpayer shall claim the credit authorized in (a) of this section on a  
17 timely filed tax return for the year in which the qualified capital investment is made,  
18 on a timely filed amended tax return, or on a timely filed tax return for the year  
19 immediately following the year in which the qualified capital investment is made. The  
20 election to apply the credit authorized in (a) of this section may not be an irrevocable  
21 election.

22 \* **Sec. 8.** AS 43.55.023(a) is amended to read:

23 (a) A producer or explorer may take a tax credit for a qualified capital  
24 expenditure as follows:

25 (1) notwithstanding that a qualified capital expenditure may be a  
26 deductible lease expenditure for purposes of calculating the production tax value of oil  
27 and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under  
28 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or  
29 explorer that incurs a qualified capital expenditure may also elect to apply a tax credit  
30 against a tax levied by AS 43.55.011(e) in the amount of 20 percent of that  
31 expenditure; [HOWEVER, NOT MORE THAN HALF OF THE TAX CREDIT MAY

1 BE APPLIED FOR A SINGLE CALENDAR YEAR;]

2 (2) a producer or explorer may take a credit for a qualified capital  
3 expenditure incurred in connection with geological or geophysical exploration or in  
4 connection with an exploration well only if the producer or explorer

5 (A) agrees, in writing, to the applicable provisions of  
6 AS 43.55.025(f)(2);

7 (B) submits to the Department of Natural Resources all data  
8 that would be required to be submitted under AS 43.55.025(f)(2).

9 \* **Sec. 9.** AS 43.55.023(d) is amended to read:

10 (d) Except as limited by (i) of this section, a person that is entitled to take a tax  
11 credit under this section that wishes to transfer the unused credit to another person or  
12 obtain a cash payment under AS 43.55.028 may apply to the department for **a**  
13 transferable tax credit **certificate** [CERTIFICATES]. An application under this  
14 subsection must be in a form prescribed by the department and must include  
15 supporting information and documentation that the department reasonably requires.  
16 The department shall grant or deny an application, or grant an application as to a lesser  
17 amount than that claimed and deny it as to the excess, not later than 120 days after the  
18 latest of (1) March 31 of the year following the calendar year in which the qualified  
19 capital expenditure or carried-forward annual loss for which the credit is claimed was  
20 incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for  
21 the calendar year in which the qualified capital expenditure or carried-forward annual  
22 loss for which the credit is claimed was incurred; or (3) the date the application was  
23 received by the department. If, based on the information then available to it, the  
24 department is reasonably satisfied that the applicant is entitled to a credit, the  
25 department shall issue the applicant **a** [TWO TRANSFERABLE] tax credit **certificate**  
26 [CERTIFICATES, EACH FOR HALF OF THE AMOUNT OF THE CREDIT]. The  
27 credit shown on [ONE OF] the **certificate** [TWO CERTIFICATES] is available for  
28 immediate use. [THE CREDIT SHOWN ON THE SECOND OF THE TWO  
29 CERTIFICATES MAY NOT BE APPLIED AGAINST A TAX FOR A CALENDAR  
30 YEAR EARLIER THAN THE CALENDAR YEAR FOLLOWING THE  
31 CALENDAR YEAR IN WHICH THE CERTIFICATE IS ISSUED, AND THE

1 CERTIFICATE MUST CONTAIN A CONSPICUOUS STATEMENT TO THAT  
2 EFFECT.] A certificate issued under this subsection does not expire.

3 \* **Sec. 10.** AS 43.55.025(a) is amended to read:

4 (a) Subject to the terms and conditions of this section, a credit against the  
5 production tax levied by AS 43.55.011(e) is allowed for exploration expenditures that  
6 qualify under (b) of this section in an amount equal to one of the following:

7 (1) 30 percent of the total exploration expenditures that qualify only  
8 under (b) and (c) of this section;

9 (2) 30 percent of the total exploration expenditures that qualify only  
10 under (b) and (d) of this section;

11 (3) 40 percent of the total exploration expenditures that qualify under  
12 (b), (c), and (d) of this section; [OR]

13 (4) 40 percent of the total exploration expenditures that qualify only  
14 under (b) and (e) of this section; or

15 (5) 80, 90, or 100 percent, or a lesser amount described in (m) of  
16 this section, of the total exploration expenditures described in (b)(1) and (2) of  
17 this section and not excluded by (b)(3) and (4) of this section that qualify only  
18 under (m) of this section.

19 \* **Sec. 11.** AS 43.55.025 is amended by adding a new subsection to read:

20 (m) The first three unaffiliated persons that each drill an offshore exploration  
21 well for the purpose of discovering oil or gas in Cook Inlet that penetrates and  
22 evaluates a prospect in the pre-Tertiary zone using a jack-up drill rig are eligible for  
23 the credit under this subsection. The person that drills the first exploration well is  
24 entitled to a credit in the amount of 100 percent of its exploration expenditures or  
25 \$25,000,000, whichever is less; the person that drills the second exploration well using  
26 the same jack-up drill rig is entitled to a credit in the amount of 90 percent of its  
27 exploration expenditures or \$22,500,000, whichever is less; and the person that drills  
28 the third exploration well using the same jack-up drill rig is entitled to a credit in the  
29 amount of 80 percent of its exploration expenditures or \$20,000,000, whichever is  
30 less. A person or an affiliate of a person drilling an exploration well is not entitled to a  
31 credit for more than one exploration well under this subsection. The department shall

1 make a determination of the order in which the wells are drilled based on the date and  
 2 time that the drill bit first turns to the right against the seafloor for the purpose of  
 3 drilling the well. Exploration expenditures eligible for the credit in this subsection may  
 4 include the necessary and reasonable costs to modify an existing jack-up rig for use in  
 5 Cook Inlet, may not include the cost to construct or manufacture a jack-up rig, and,  
 6 notwithstanding (b) of this section, must be incurred for work performed after June 30,  
 7 2010. If the exploration well for which a credit is received under this subsection  
 8 results in sustained production of oil or gas from a reservoir discovered by the  
 9 exploration well, and notwithstanding that the credit may have been transferred under  
 10 (g) of this section, 50 percent of the amount of the credit received shall be repaid to  
 11 the department by the person that received the credit in equal monthly installments  
 12 over a 10-year period commencing 60 days after the start of sustained production of  
 13 oil or gas. Whether the exploration well for which a credit is requested under this  
 14 subsection penetrated and evaluated a prospect in the pre-Tertiary zone and the  
 15 exploration well resulted in sustained production of oil or gas from a reservoir  
 16 discovered by the exploration well shall be determined by the commissioner of natural  
 17 resources and reported to the commissioner. A taxpayer that obtains a credit under this  
 18 subsection may not claim a tax credit under AS 43.55.023 or another provision in this  
 19 section for the same exploration expenditure. In this subsection,

20 (1) "jack-up rig" means a mobile drilling platform with extendible legs  
 21 for support on the ocean floor;

22 (2) "reservoir" means an oil and gas accumulation, discovered and  
 23 evaluated by testing, that is separate from any other accumulation of oil and gas;

24 (3) "sustained production" means production of oil or gas from a  
 25 reservoir into a pipeline or other means of transportation to market, but does not  
 26 include testing, evaluation, or pilot production.

27 \* **Sec. 12.** The uncodified law of the State of Alaska enacted by sec. 3, ch. 61, SLA 2003, is  
 28 amended to read:

29 Sec. 3. CLAIM OF GAS EXPLORATION AND DEVELOPMENT TAX  
 30 CREDIT CONTINUED. A taxpayer who, on the effective date of repeal of  
 31 AS 43.20.043 by secs. 2 and 5, ch. 61, SLA 2003, as amended by sec. 14 [SEC. 2] of

1           this 2010 Act, claims the balance of any unused portion of the gas exploration and  
2           development tax credit as a carry-forward under AS 43.20.043(c), may,  
3           notwithstanding the repeal of that subsection, continue to claim the balance of the  
4           credit until the claim of the credit is exhausted or until the tax year ending  
5           December 31, 2024 [2017], whichever occurs earlier. The provisions of AS 43.20.043  
6           as they read on the day immediately preceding the effective date of the repeal of that  
7           section apply to the claim of the credit if carried forward under this section.

8           \* **Sec. 13.** AS 43.55.028(e)(2) and 43.55.028(e)(3) are repealed.

9           \* **Sec. 14.** Section 5, ch. 61, SLA 2003, is amended to read:

10                       Sec. 5. Section 2, ch. 61, SLA 2003, [OF THIS ACT] takes effect January 1,  
11                       2020 [2013].

12           \* **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).