

AMENDMENT #5

OFFERED IN THE HOUSE  
TO: CSHB.110(FIN)

BY REPRESENTATIVE GARA

1 Page 1, lines 1 - 8: *(Title amendment)*

2 Delete all material and insert:

3 **""An Act providing for a tax credit applicable to the oil and gas production tax**  
4 **based on capital expenditures for a production facility for new oil and gas production;**  
5 **and providing for an effective date.""**

6

7 Page 1, line 10, through page 20, line 26:

8 Delete all material and insert:

9 **\* Section 1.** AS 43.20.043(g) is amended to read:

10 (g) A taxpayer that obtains a credit for a qualified capital investment or cost  
11 incurred for qualified services under this section may not also claim a tax credit or  
12 royalty modification for the same qualified capital investment or cost incurred for  
13 qualified services under AS 38.05.180(i), AS 41.09.010, AS 43.55.023, [OR]  
14 43.55.025, or 43.55.026. However, a taxpayer may elect not to obtain a credit under  
15 this section in order to qualify for a credit provided under AS 38.05.180(i),  
16 AS 41.09.010, AS 43.55.023, [OR] 43.55.025, or 43.55.026.

17 **\* Sec. 2.** AS 43.55.023(a) is amended to read:

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

20 (1) except as limited by (p) of this section, notwithstanding that a  
21 qualified capital expenditure may be a deductible lease expenditure for purposes of  
22 calculating the production tax value of oil and gas under AS 43.55.160(a), unless a  
23 credit for that expenditure is taken under AS 38.05.180(i), AS 41.09.010,

1 AS 43.20.043, [OR] AS 43.55.025, or 43.55.026, a producer or explorer that incurs a  
2 qualified capital expenditure may also elect to apply a tax credit against a tax levied by  
3 AS 43.55.011(e) in the amount of 20 percent of that expenditure; however, not more  
4 than half of the tax credit may be applied for a single calendar year;

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

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

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

12 \* **Sec. 3.** AS 43.55.023(d) is amended to read:

13 (d) Except as limited by (i) and (p) of this section, a person that is entitled to  
14 take a tax credit under this section that wishes to transfer the unused credit to another  
15 person or obtain a cash payment under AS 43.55.028 may apply to the department for  
16 transferable tax credit certificates. An application under this subsection must be in a  
17 form prescribed by the department and must include supporting information and  
18 documentation that the department reasonably requires. The department shall grant or  
19 deny an application, or grant an application as to a lesser amount than that claimed and  
20 deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the  
21 year following the calendar year in which the qualified capital expenditure or carried-  
22 forward annual loss for which the credit is claimed was incurred; (2) the date the  
23 statement required under AS 43.55.030(a) or (e) was filed for the calendar year in  
24 which the qualified capital expenditure or carried-forward annual loss for which the  
25 credit is claimed was incurred; or (3) the date the application was received by the  
26 department. If, based on the information then available to it, the department is  
27 reasonably satisfied that the applicant is entitled to a credit, the department shall issue  
28 the applicant two transferable tax credit certificates, each for half of the amount of the  
29 credit. The credit shown on one of the two certificates is available for immediate use.  
30 The credit shown on the second of the two certificates may not be applied against a tax  
31 for a calendar year earlier than the calendar year following the calendar year in which

1 the certificate is issued, and the certificate must contain a conspicuous statement to  
2 that effect. A certificate issued under this subsection does not expire.

3 \* **Sec. 4.** AS 43.55.023 is amended by adding a new subsection to read:

4 (p) The amount of credit for a capital expenditure under (a) of this section for  
5 an expenditure that is also a lease expenditure under AS 43.55.165 is reduced by the  
6 amount necessary so that the tax benefit percentage is not more than 85 percent of the  
7 capital expenditure. The amount of credit for a capital expenditure under (a) of this  
8 section that may not be taken because of the limitation in this subsection may not be  
9 applied in a later calendar year under (c) of this section and may not be included in an  
10 application for a tax credit certificate under (d) of this section. In this subsection, "tax  
11 benefit percentage" means the sum of the average monthly tax rate under  
12 AS 43.55.011(e) for the calendar year in which the credit is taken and the percentage  
13 of the capital expenditure that may be taken as a credit under (a) of this section.

14 \* **Sec. 5.** AS 43.55 is amended by adding a new section to read:

15 **Sec. 43.55.026. Production facility cost credit.** (a) This section applies to a  
16 credit for a qualified production facility expenditure incurred before the date of  
17 production of oil or gas in paying quantities for a lease or property that is taxable  
18 under AS 43.55.011(e) and that contains land that, as of December 31, 2010, is not or  
19 previously had not been within a unit or produced oil or gas in paying quantities.

20 (b) Except as limited by (g) of this section, the amount of the credit under this  
21 section is equal to 50 percent of the qualified production facility expenditures that are  
22 incurred after the completion of the first well drilled that discovers a pool capable of  
23 commercial production from the lease or property and before the commencement of  
24 production in paying quantities. The department, in consultation with the

25 (1) Alaska Oil and Gas Conservation Commission, shall determine the  
26 date on which the first well drilled discovered a pool capable of production from a  
27 lease or property for which the credit is taken; and

28 (2) Department of Natural Resources, shall determine the date of the  
29 commencement of production in paying quantities from the lease or property for  
30 which the credit is taken.

31 (c) The credit under this section may be applied against the tax due under

1 AS 43.55.011(e) during the two-year period immediately following the date of the  
2 commencement of production in paying quantities.

3 (d) A qualified production facility expenditure that is taken as a credit under  
4 this section may not be used as an expenditure for which a credit may be taken under  
5 AS 43.20.043 or AS 43.55.023. A credit under AS 43.55.023 for a qualified  
6 production facility expenditure may not be taken against the tax due under  
7 AS 43.55.011(e) during the same month in which a credit is taken or purchased by the  
8 department under this section.

9 (e) A credit or portion of a credit under this section may not be used to reduce  
10 a taxpayer's tax liability under AS 43.55.011(e) below zero for any calendar month. A  
11 person eligible for the credit under this section that does not take the credit within the  
12 two-year period immediately following the date of the commencement of production  
13 in paying quantities may apply to the department for a cash payment under  
14 AS 43.55.028. An application under this subsection must be in a form prescribed by  
15 the department and must include supporting information and documentation that the  
16 department reasonably requires. The department shall grant or deny an application, or  
17 grant an application as to a lesser amount than that claimed and deny it as to the  
18 excess, not later than 120 days after the date the department receives the application.  
19 If, based on the information then available to it, the department is reasonably satisfied  
20 that the applicant is entitled to a payment, the department shall issue the cash payment  
21 or a lesser amount after applying all or a portion of the credit to any outstanding  
22 unpaid balance of a tax owed by the applicant under this title.

23 (f) The department shall adopt regulations describing the procedures for  
24 determining the amount of the credit, record keeping, verification of the accuracy of  
25 the credit claimed, and other regulations necessary to administer this section.

26 (g) The amount of credit for a qualified production facility expenditure under  
27 this section for an expenditure that is also a lease expenditure under AS 43.55.165 is  
28 reduced by the amount necessary so that the tax benefit percentage is not more than 85  
29 percent of the qualified production facility expenditure. The amount of credit for a  
30 qualified production facility expenditure under this section that may not be taken  
31 because of the limitation in this subsection may not be included in an application for a

1 cash payment under (e) of this section. In this subsection, "tax benefit percentage"  
 2 means the sum of the average monthly tax rate under AS 43.55.011(e) for the calendar  
 3 year in which the credit is taken and the percentage of the qualified production facility  
 4 expenditure that may be taken as a credit under this section.

5 (h) In this section,

6 (1) "production facility" means a facility that is upstream from the  
 7 point of production and is a flow station, a gathering center, a pump station, a storage  
 8 tank, and a related appurtenance, or other facility that gathers, cleans, dehydrates,  
 9 conditions, or stores crude oil, natural gas, or associated hydrocarbons and that is  
 10 located on a lease or property leased from the state;

11 (2) "production in paying quantities" means production of oil and gas  
 12 in quantities sufficient to recover the cost of operating, although the quantity may be  
 13 insufficient to recover the cost of drilling;

14 (3) "qualified production facility expenditure" means an expenditure  
 15 for a production facility that may be recognized as a qualified capital expenditure as  
 16 defined in AS 43.55.023.

17 \* **Sec. 6.** AS 43.55.028(a) is amended to read:

18 (a) The oil and gas tax credit fund is established as a separate fund of the state.  
 19 The purpose of the fund is to purchase transferable tax credit certificates issued under  
 20 AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to  
 21 pay **for unused credits under AS 43.55.026 that qualify for a cash payment and**  
 22 **refunds claimed under AS 43.20.046.**

23 \* **Sec. 7.** AS 43.55.028(g) is amended to read:

24 (g) The department may adopt regulations to carry out the purposes of this  
 25 section, including standards and procedures to allocate available money among  
 26 applications for purchases **and payments for unused credits** under this chapter and  
 27 claims for refunds under AS 43.20.046 when the total amount of the applications for  
 28 purchase and claims for refund exceed the amount of available money in the fund. The  
 29 regulations adopted by the department may not, when allocating available money in  
 30 the fund under this section, distinguish an application for the purchase of a credit  
 31 certificate issued under AS 43.55.023(m), **a payment for an unused credit that**

1 qualifies for a cash payment under AS 43.55.026, or a claim for refund under  
2 AS 43.20.046.

3 \* **Sec. 8.** AS 43.55.028 is amended by adding a new subsection to read:

4 (j) The department, on the written application of a person for the payment of  
5 an unused credit that qualifies for a cash payment under AS 43.55.026 after the end of  
6 the two-year period immediately following the date of the commencement of  
7 production in paying quantities, may use available money in the oil and gas tax credit  
8 fund to purchase, in whole or in part, the certificate if the department finds that

9 (1) the applicant does not have an outstanding liability to the state for  
10 unpaid delinquent taxes under this title;

11 (2) the applicant's total tax liability under AS 43.55.011(e) for the  
12 calendar year in which the application is made, after application of all available tax  
13 credits, is zero; and

14 (3) the purchase is consistent with this section and regulations adopted  
15 under this section.

16 \* **Sec. 9.** AS 43.55.180(a) is amended to read:

17 (a) The department shall study

18 (1) the effects of the provisions of this chapter on oil and gas  
19 exploration, development, and production in the state, on investment expenditures for  
20 oil and gas exploration, development, and production in the state, on the entry of new  
21 producers into the oil and gas industry in the state, on state revenue, and on tax  
22 administration and compliance, giving particular attention to the tax rates provided  
23 under AS 43.55.011, the tax credits provided under AS 43.55.023 - 43.55.026  
24 [AS 43.55.023 - 43.55.025], and the deductions for and adjustments to lease  
25 expenditures provided under AS 43.55.160 - 43.55.170; and

26 (2) the effects of the tax rates under AS 43.55.011(i) on state revenue  
27 and on oil and gas exploration, development, and production on private land, and the  
28 fairness of those tax rates for private landowners.

29 \* **Sec. 10.** This Act takes effect January 1, 2012."