

**SENATE CS FOR CS FOR HOUSE BILL NO. 287(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/20/14

Referred: Today's Calendar

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the determination of the royalty received by the state on oil  
2 production refined or processed in the state; providing tax credits for qualified  
3 infrastructure expenditures for in-state refineries; approving and ratifying the sale of  
4 royalty oil by the State of Alaska to Tesoro Corporation and Tesoro Refining and  
5 Marketing Company LLC; and providing for an effective date."

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

7 \* **Section 1.** AS 38.05.180(cc) is amended to read:

8 (cc) The provisions of (aa), [AND] (ee), and (hh) of this section do not  
9 prohibit the commissioner from accepting any payment on a federal lease tendered by  
10 the federal agency responsible for determination and transmittal of the payment to the  
11 state under 30 U.S.C. 191 or otherwise due the state as the state's royalty share of gas  
12 production or the state's royalty share of oil production irrespective of the state's  
13 acceptance of an amount that is different than the amount due under the lease for

1 purposes of determining royalty share on oil and gas production under that subsection.

2 \* **Sec. 2.** AS 38.05.180 is amended by adding new subsections to read:

3 (hh) Upon written request of a lessee of a lease issued under this section or of  
4 a lessee of federal land from which the state is entitled to receive a share of the royalty  
5 on oil production, the commissioner may enter into an agreement with the lessee to  
6 accept, as a value for the state's royalty share of oil production sold to an in-state  
7 refiner, an amount that is not less than the price established in a contract between the  
8 lessee and the in-state refiner but not exceeding the amount that would otherwise be  
9 due under the lease. This subsection applies to a contract entered into after  
10 December 31, 2014. The commissioner shall respond to a request received under this  
11 section within 90 days after the receipt of the request by the department. The  
12 commissioner may enter into an agreement under this section if

13 (1) the commissioner issues a written finding that

14 (A) the agreement is in the best interest of the state;

15 (B) the parties to the contract between the lessee and the in-  
16 state refiner are not affiliated under (2) of this subsection; and

17 (C) based on clear and convincing evidence,

18 (i) the contract price is not unreasonably low; and

19 (ii) the prospective reduction in royalty receipts will be  
20 balanced by employment opportunities or other tangible benefits to the  
21 state; and

22 (2) the primary function of the in-state refiner's contracting with the  
23 lessee is to engage in the manufacture of refined petroleum products in the state, and  
24 the in-state refiner is not affiliated with the lessee or with a subsequent purchaser of  
25 more than 10 percent of the in-state refiner's product; the parties to a contract or  
26 purchase are affiliated if, in the judgment of the commissioner, one of the parties to  
27 the contract or purchase exercises substantial influence over the policies and actions of  
28 the other as evidenced by a relationship based on common ownership or family  
29 interest or by action taken in concert whether or not that influence is based on  
30 stockholdings, stockholders, officers, or directors.

31 (ii) In (cc) and (hh) of this section,

1 (1) "in-state refiner" means a person engaged in the manufacture of  
2 refined petroleum products in the state;

3 (2) "price established in the contract between the lessee and the in-state  
4 refiner" includes tax reimbursement amounts, deliverability and other charges, and  
5 other forms of consideration paid by the in-state refiner, as appropriate, under the  
6 contract;

7 (3) "state's royalty share of oil production" includes payments on  
8 federal leases made to the state under 30 U.S.C. 191.

9 \* **Sec. 3.** AS 43.20 is amended by adding a new section to read:

10 **Sec. 43.20.053. Qualified in-state oil refinery infrastructure expenditures**  
11 **tax credit.** (a) A taxpayer that owns an in-state oil refinery whose primary function is  
12 the manufacturing and sale of refined petroleum products to third parties in arm's  
13 length transactions may apply a credit against the tax due under this chapter for a  
14 qualified infrastructure expenditure incurred in the state for a tax year beginning after  
15 December 31, 2014, and before January 1, 2020. The total amount of credit a taxpayer  
16 may receive under this section may not exceed the lesser of 40 percent of qualified  
17 infrastructure expenditures incurred in the state during the tax year or \$10,000,000 for  
18 each in-state refinery for which qualified expenditures are incurred.

19 (b) A taxpayer applying the credit under this section against a liability under  
20 this chapter shall claim the credit on the taxpayer's return. A tax credit or portion of a  
21 tax credit under this section may not be used to reduce the taxpayer's tax liability  
22 under this chapter below zero. Any unused tax credit or portion of a tax credit under  
23 this section may be carried forward to the five tax years immediately following the tax  
24 year in which the qualified infrastructure expenditures were incurred.

25 (c) An expenditure that is the basis of the credit under this section may not be  
26 the basis for

27 (1) a deduction against the tax levied under this chapter;

28 (2) a credit or deduction under another provision of this title; or

29 (3) any federal credit claimed under this title.

30 (d) A person entitled to a tax credit under this section that is greater than the  
31 person's tax liability under this chapter may request a refund or payment in the amount

1 of the unused portion of the tax credit.

2 (e) The department may use money available in the oil and gas tax credit fund  
3 established in AS 43.55.028 to make a refund or payment under (d) of this section in  
4 whole or in part if the department finds that

5 (1) the claimant does not have an outstanding liability to the state for  
6 unpaid delinquent taxes under this title; and

7 (2) after application of all available tax credits, the claimant's total tax  
8 liability under this chapter for the calendar year in which the claim is made is zero.

9 (f) A refund under this section does not bear interest.

10 (g) If an oil refinery ceases commercial operation during the nine calendar  
11 years immediately following the calendar year in which a credit under this section was  
12 received, regardless of whether commercial operation later resumes, the taxpayer's tax  
13 liability under this chapter will be increased. The tax liability increase is equal to the  
14 total amount of credit taken multiplied by a fraction

15 (1) the numerator of which is the difference between 10 and the  
16 number of calendar years for which the oil refinery was eligible for a credit under this  
17 section; and

18 (2) the denominator of which is 10.

19 (h) A person claiming a tax credit under this section for an oil refinery that  
20 ceases commercial operation or is sold during the nine calendar years immediately  
21 following the calendar year in which a credit under this section was received shall  
22 notify the department in writing of the date the oil refinery ceased commercial  
23 operation or was sold. The notice must be filed with the return for the tax year in  
24 which the oil refinery ceases commercial operation or was sold.

25 (i) The issuance of a refund under this section does not limit the department's  
26 ability to later audit or adjust the claim as provided in AS 43.05 if the department  
27 determines that the taxpayer claiming the credit was not entitled to the amount of the  
28 credit.

29 (j) In this section,

30 (1) "modification" means an adjustment or other alteration to existing  
31 tangible personal property that has a useful life of three years or more;

1 (2) "qualified infrastructure expenditure" means an expenditure for the  
 2 in-state purchase, installation, or modification of tangible personal property for the in-  
 3 state manufacture or in-state transport of refined petroleum products, or petroleum-  
 4 based feedstock;

5 (3) "refined petroleum products" means separate marketable elements,  
 6 compounds, or mixtures of oil in liquid form, including gasoline, diesel, jet fuel, gas  
 7 oil, heating oil, and kerosene;

8 (4) "unpaid delinquent tax" means an amount of tax for which the  
 9 department has issued an assessment that has not been paid and, if contested, has not  
 10 been finally resolved in the taxpayer's favor.

11 \* **Sec. 4.** AS 43.55.028(a) is amended to read:

12 (a) The oil and gas tax credit fund is established as a separate fund of the state.  
 13 The purpose of the fund is to purchase transferable tax credit certificates issued under  
 14 AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to  
 15 pay refunds and payments claimed under AS 43.20.046, [OR] 43.20.047, or  
 16 43.20.053.

17 \* **Sec. 5.** AS 43.55.028(g) is amended to read:

18 (g) The department may adopt regulations to carry out the purposes of this  
 19 section, including standards and procedures to allocate available money among  
 20 applications for purchases under this chapter and claims for refunds and payments  
 21 under AS 43.20.046, [OR] 43.20.047, or 43.20.053 when the total amount of the  
 22 applications for purchase and claims for refund exceed the amount of available money  
 23 in the fund. The regulations adopted by the department may not, when allocating  
 24 available money in the fund under this section, distinguish an application for the  
 25 purchase of a credit certificate issued under former AS 43.55.023(m) or a claim for a  
 26 refund or payment under AS 43.20.046, [OR] 43.20.047, or 43.20.053.

27 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
 28 read:

29 ROYALTY OIL SALE CONTRACT WITH TESORO CORPORATION AND  
 30 TESORO REFINING AND MARKETING COMPANY LLC APPROVED AND  
 31 RATIFIED. In accordance with AS 38.06.055, the legislature approves and ratifies the

1 proposed Amendment to Agreement for the Sale of Royalty Oil attached as Exhibit 1 to the  
2 final best interest finding and determination executed January 9, 2014, by the Department of  
3 Natural Resources regarding the amendment of the Agreement for the Sale Of Royalty Oil  
4 Between and Among the State of Alaska and Tesoro Corporation, a Delaware Corporation  
5 and Tesoro Refining and Marketing Company LLC, a Delaware Limited Liability Company,  
6 October 25, 2013.

7 \* **Sec. 7.** Sections 1 - 5 of this Act take effect January 1, 2015.

8 \* **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect immediately under  
9 AS 01.10.070(c).