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1 IN THE HOUSE

BY LETHIN, HAYES AND MEEKINS

2 HOUSE BILL NO. 539

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing renewable resources development
7 incentives and tax credits and repealing the Alaska
8 Industrial Incentive Act and the Alaska Industrial Tax
9 Credit Act."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 43 is amended by adding new chapters to read:

12 CHAPTER 27. ALASKA RENEWABLE RESOURCES DEVELOPMENT INCENTIVE ACT.

13 Sec. 43.27.010. EXEMPTIONS. (a) An exempted business is exempt
14 from income tax upon its renewable resources development income derived
15 during the 10 years following the date of beginning its operations as
16 determined by the department.

17 (b) The property of an exempted business used in the development,
18 organization, construction, establishment, or operation of the activity
19 which which gives rise to the exemption and personal property devoted to
20 renewable resource development is not subject to taxes of the state or a
21 political subdivision of the state on real and personal property for the
22 following periods beginning on January 1 of the year in which the exempt-
23 ed business starts operations if the business owns as of that date the
24 property or uses property devoted to renewable resource development;
25 otherwise the periods begin on January 1 of the year following the year
26 in which the exempted business starts the activities that give rise to
27 its exemption:

28 (1) when the investment in real or personal property is not
29 greater than \$1,000,000 -- five years;

1 (2) when the investment exceeds \$1,000,000 but not \$3,000,000
2 -- six years for the whole investment;

3 (3) when the investment exceeds \$3,000,000 but not \$5,000,000
4 -- seven years for the whole investment;

5 (4) when the investment exceeds \$5,000,000 but not \$7,000,000
6 -- eight years for the whole investment;

7 (5) when the investment exceeds \$7,000,000 but not \$10,000,000
8 -- nine years for the whole investment;

9 (6) when the investment exceeds \$10,000,000 -- ten years for
10 the whole investment.

11 (c) If an exempt business uses real or personal property owned
12 by it and property devoted to renewable resource development income,
13 the schedule set out in (b) of this section applies on the investment
14 made on its own property and separately and independently upon the
15 investment made on property devoted to renewable resource development.

16 (d) The schedule set out in (b) of this section applies first to
17 the original investment. Within 30 days after the end of the fifth year
18 of the exemption, the exempted business shall submit to the department a
19 sworn statement of the investment made up to that date in real and per-
20 sonal property owned by it. A similar statement shall be prepared and
21 submitted by the owner of property devoted to renewable resource develop-
22 ment. The department shall verify the correctness of the statement with-
23 in 60 days after it is filed. When the amounts of the investments are
24 verified, the department shall determine and shall advise the correspond-
25 ing beneficiary of the period of exemption readjusted which results from
26 the total investment in each of the two classes of property at the end
27 of the period of five years. This procedure of the readjustment shall
28 be repeated, if necessary, at the end of the seventh year and at the end
29 of the tenth year of the possible duration of the exemption.

1 (e) An exempted business is not subject to license fees, excises,
2 or other taxes levied by the state or a political subdivision of the
3 state for 10 years from the date when the business begins its operations
4 as certified to by the department. This exemption does not apply to
5 contributions to the Alaska unemployment compensation fund.

6 (f) If the exempt business began its operations on or before the
7 filing of the application for tax exemption, the periods of exemption
8 referred to in (a) and (e) of this section are counted from the date
9 when the application for tax exemption was filed.

10 (g) The department may grant a partial exemption from the taxes
11 referred to in this section when the interest of the state or a political
12 subdivision appears to be best served by a partial exemption.

13 Sec. 43.27.020. DISTRIBUTIONS. (a) The distribution of dividends
14 and profits by a corporation or partnership that is an exempted business,
15 if made within 15 years after it starts operations as an exempted busi-
16 ness, and if made from renewable resource development income derived
17 during the first seven years of its operations covered by the exemption,
18 is exempt from income tax in the same proportion in which the renewable
19 resource development income is exempt from taxes in favor of the exempted
20 business in accordance with sec. 10 of this chapter.

21 (b) A distribution of dividends by a corporation exempt under this
22 chapter from payment of taxes is considered to be made from gains or
23 profits exempted from taxes under this chapter, if on the date of distri-
24 bution the latter does not exceed the undistributed balance of the gains
25 or profits.

26 (c) If a corporation, on the effective date of its tax exemption,
27 has accumulated a surplus, dividend distributions made on and after that
28 date are considered to be made from the undistributed balance of the
29 surplus, but after the surplus is exhausted by the distributions, (a)

1 of this section applies.

2 (d) No profit or loss may be recognized if the shares acquired by
3 purchase or otherwise of a tax-exempt corporation are sold or exchanged
4 on or before the termination date of the tax exemption.

5 (e) Profit or loss shall be recognized if the shares acquired by
6 purchase or otherwise of a tax-exempt corporation are sold or exchanged
7 after the corporation's exemption termination date. The profit derived
8 from the sale or other disposition of the shares is the surplus of the
9 amount received in the sale or disposition over the base established by
10 (f) of this section, and the loss is the excess of that base over the
11 amount received, but shall be recognized up to the limit provided by the
12 state income tax in force when the transaction takes place.

13 (f) If shares of a tax-exempt corporation have been acquired by
14 purchase or otherwise before the corporation's exemption termination
15 date, the larger of the following bases shall be used to determine the
16 profit or loss made after the exemption termination date from the sale
17 or other disposition of the shares:

18 (1) the value of the share on the exemption termination date
19 according to the books of the corporation less the amount of tax-exempt
20 distributions received on the shares after that date; or

21 (2) the cost of the shares, less the amount of tax-exempt
22 distributions received on the shares before and after the exemption
23 termination date.

24 Sec. 43.27.030. LIQUIDATION OF EXEMPTED BUSINESSES. (a) If on or
25 before the expiration of tax exemption of an exempted business, property,
26 including money, is received by a domestic or foreign corporation (the
27 transferee) on complete liquidation of the exempted business (the
28 transferor), no income tax may be assessed on or be paid by the trans-
29 feror or the transferee with respect to the liquidation, only if

1 (1) the transferee was, on the date of adoption of the
2 liquidation plan, and has continued to be at all times, until the re-
3 ceipt of the property under the plan, the owner of at least 80 per cent
4 of the total combined voting power of all classes of voting stock, and
5 the owner of at least 80 per cent of all other classes of stock, except
6 nonvoting stock limited and preferred as to dividends;

7 (2) all the property was received by the transferee under the
8 liquidation plan, on or before the exemption termination date; and

9 (3) the distribution in liquidation by the transferor, whether
10 at one time or from time to time, was made by the transferor in complete
11 cancellation or redemption of all of its capital stock.

12 (b) No income tax may be assessed on or be paid by the transferor,
13 whether or not the transferee assumes liabilities or obligations of the
14 transferor or receives the property subject to a liability or obligation
15 of the transferor.

16 (c) If the exemption of a transferor is terminated before the
17 exemption termination date, a sum equal to the earned surplus of the
18 transferor corporation as of the end of the fiscal year of the corpora-
19 tion in which the termination becomes effective may be transferred by the
20 transferor to the transferee under the circumstances described under
21 (a)(1) and (3) of this section at any time thereafter without assessment
22 of income tax on the transferor or on the transferee, except in the cases
23 of mandatory revocation under secs. 60 and 90 of this chapter when no
24 tax-free liquidation shall be allowed in accordance with this section.

25 (d) After the exemption of the transferor expires, a sum equal to
26 the capital and the earned surplus of the transferor as of that date
27 may be transferred by the transferor to the transferee under the circum-
28 stances described in (a)(1) and (3) of this chapter at any time thereafter
29 without assessment of income tax on the transferor or the transferee.

1 (e) "Earned surplus" of the transferor is the earned surplus accord-
2 ing to the books of the transferor, determined in accordance with general-
3 ly accepted accounting principles, but the amount may not be larger,
4 except by the amount of the income tax exemption and all other tax exemp-
5 tions granted under this chapter to the transferor, than the amount in
6 case the transferor was subject to tax during the exemption period.

7 (f) In a liquidation under the circumstances described in this
8 section, the base of the property to the transferee on subsequent
9 disposition by the transferee and the base for allowance for deprecia-
10 tion or depletion is the adjusted base of the property, under the income
11 tax law in force, plus an amount equal to the earned surplus of the
12 transferor at the beginning of the liquidation. The earned surplus
13 shall be allocated to the several properties subject to depreciation or
14 depletion transferred in accordance with their respective adjusted bases
15 at the beginning of the liquidation.

16 Sec. 43.27.040. APPLICATION FOR EXEMPTIONS. A person who has
17 established or proposes to establish an eligible business in the state
18 may apply to the department for tax exemption under this chapter. A
19 grant of tax exemption under this chapter is considered a contract be-
20 tween the grantee and the state. The department may include in a grant
21 of tax exemption such terms and conditions as in its judgment will fur-
22 ther the purposes of renewable resource development.

23 Sec. 43.27.050. HEARING ON APPLICATION. (a) The commissioner
24 shall appoint the personnel necessary to carry out this chapter. The
25 commissioner shall make arrangements for such public hearings as he con-
26 siders necessary and shall require an applicant for tax exemption to
27 present evidence that will justify the exemption.

28 (b) The commissioner or another person whom the commissioner
29 designates shall hear the evidence presented in relation to an

1 application for tax exemption; he may summon witnesses and take their
2 testimony as to facts related to the tax exemption applied for, and
3 administer an oath to the person testifying before him; and shall make
4 a report to the department on the evidence, together with his recommenda-
5 tions.

6 (c) The department shall adopt regulations it considers necessary
7 to carry out the purposes of this chapter. The regulations shall be
8 published in a newspaper of general circulation in the state.

9 (d) All decisions and findings of the department under this chapter
10 are final and no judicial or administrative appeal or other proceeding
11 lies against them unless otherwise specifically provided.

12 Sec. 43.27.053. COORDINATION WITH POLITICAL SUBDIVISION. During
13 the period in which the department holds hearings on an application,
14 the department shall advise the political subdivision affected by the
15 application of the dates and locations of the hearings to be held on the
16 application.

17 Sec. 43.27.056. OPTION OF POLITICAL SUBDIVISION TO REQUIRE LIMITED
18 TAX CONTRIBUTION. In granting an exemption under this chapter, the
19 department, upon the request by resolution of the governing body of a
20 political subdivision which maintains a school system and in which the
21 property of the business to be exempted is located, shall require that
22 the applicant pay to the political subdivision an annual real property
23 tax on the property which is the subject of the application in an amount
24 not to exceed the amount which would be raised from a levy on the pro-
25 perty for purposes of meeting the required local tax effort required
26 under the public school foundation program.

27 Sec. 43.27.060. REVOCATION OF TAX EXEMPTION. (a) The department,
28 after permitting the person granted an exemption to appear and be heard,
29 may or shall revoke the tax exemption granted as provided in this section

1 (b) The department may revoke the tax exemption if the person

2 (1) fails to comply with any obligation imposed on him by
3 this chapter or by the regulations adopted under it, or by the terms of
4 the declaration of exemption;

5 (2) does not begin or fails to complete the construction of
6 the installations necessary for the production of the manufactured
7 products which he proposes to produce, or fails to begin operation within
8 the periods fixed for those purposes in the grant of exemption; however,
9 periods may be extended by the department when, in its judgment, just
10 cause for extension exists, except that no period may be originally
11 fixed in excess of three years from the date of the exemption grant for
12 the commencement of operations; or

13 (3) discontinues production on a commercial scale or opera-
14 tions in a business eligible under sec. 150(a)(4)(A) - (C), (E), or (F)
15 of this chapter for more than 30 days without the authorization of the
16 department; the department shall authorize discontinuances for more than
17 30 days when they are the result of causes beyond the control of the
18 person.

19 (c) The permissive revocation is effective from the date of oc-
20 currence of the fault on which the order of revocation is predicated.

21 (d) The department shall revoke a tax exemption if it is obtained
22 by falsely or fraudulently representing (1) the nature of the product
23 manufactured or cultivated or to be manufactured or cultivated or the
24 nature and extent of the manufacturing or production processes performed
25 or to be performed in the state; (2) that property is or was to be de-
26 voted to renewable resource development; or (3) other facts or circum-
27 stances upon which the exemption grant was predicated in whole or in part

28 (e) In a mandatory revocation, (1) all net income previously
29 reported as renewable resource development income and all distribution

1 from it are subject to normal tax and surtax; (2) the taxpayer is
2 considered to have filed a false or fraudulent return with intent to
3 evade tax, and is subject to the penal provisions of the state income
4 tax laws; and (3) the tax due and all other taxes which are exempted and
5 unpaid become due and shall be assessed and collected in accordance with
6 the provisions of the tax laws.

7 (f) Nothing in this section affects the tax exemptions granted with
8 respect to property devoted to renewable resource development which is
9 leased or used by a business whose exemption has been cancelled manda-
10 torily, under this section or sec. 90 of this chapter, unless it is
11 shown that the lease of utilization was not undertaken in good faith
12 because when the property was leased or made available to the exempted
13 business, the owner of it had knowledge of the facts that subsequently
14 caused the mandatory cancellation.

15 Sec. 43.27.070. REPORTS. (a) Before approving or disapproving an
16 application for exemption, the department shall consider the reports on
17 each application which are submitted to it by the Department of Natural
18 Resources and other executive offices of the state government which the
19 department considers proper. The reports shall be made by the state
20 offices within the time the department fixes. If a report is not sub-
21 mitted by a state office within the time fixed, the department may dis-
22 pense with the report and act upon the application for exemption.

23 (b) A person covered by the benefits of this chapter shall (1)
24 present to the department, within 75 days after the close of the
25 grantee's fiscal year, a complete list and a correct valuation of all
26 real and personal property declared tax exempt under this chapter which
27 the person possesses in his own right or has in his possession on
28 January 1 of each year; (2) file annually with the Department of Revenue,
29 under the income tax law in force, but independently of the amount of

1 his gross or net income, a separate income tax return, in addition to
2 that which he is obligated to file in relation to the operations of the
3 exempted business; and (3) keep separately the accounting records rela-
4 tive to the exempted business, and keep the records, make the sworn
5 statements, present the declarations, and comply with the regulations
6 which the department prescribes for the administration of this chapter
7 and which the Department of Revenue prescribes in connection with the
8 levy and collection of all taxes.

9 Sec. 43.27.080. TRANSFER OF AN EXEMPTED BUSINESS. (a) If a tax-
10 exemption grant, shares of stock, or a partnership participation in an
11 exempted business is transferred without the earlier written approval
12 of the department, the exemption is forfeited, except as set out in
13 (b) of this section.

14 (b) The following transfers are permitted:

15 (1) a transfer of the assets of a decedent to his estate or
16 a transfer by bequest or inheritance;

17 (2) an exchange within the provisions of sec. 30 of this
18 chapter;

19 (3) a transfer of share of stock or a partnership participa-
20 tion when the transfer does not result in a change in control of the
21 exempted business, applying the rules of stock ownership provided by
22 the income tax laws then in force;

23 (4) a transfer of shares of stock of a corporation owning or
24 conducting an exempted business which occurs after the department
25 determines that a transfer of shares of stock of the corporation is
26 permitted without the earlier written approval of the department; the
27 department may make this determination after considering the extent to
28 which availability of investment capital depends on the existence of
29 securities which are freely transferable, the nature of the exempted

1 business and its importance to the renewable resource development of
2 the state, the integrity and financial standing of the stockholders,
3 and the paid-in capitalization and number of stockholders that the
4 corporation expects to have at the time of the commencement of operations
5 of the exempted business; before making the determination the department
6 shall consider the reports on each case submitted to it by the Department
7 of Natural Resources and the other executive offices of the state
8 government which the department considers proper;

9 (5) a pledge of hypothecation entered into in the normal
10 course of business, solely to create security for bona fide indebtedness;

11 (6) a transfer by operation of law or court order to a
12 trustee in bankruptcy or a receiver.

13 (c) A corporation owning or conducting an exempted business
14 shall give written notice to the department of each transfer of record
15 of shares of stock of the corporation not later than 30 days after the
16 transfer. Written notice shall be given to the department by an
17 interested party of each transfer of a partnership participation exempted
18 business not later than 30 days after the transfer.

19 Sec. 43.27.090. DENIAL OF TAX EXEMPTION TO SUCCESSORS OF PREDE-
20 CESSOR EXEMPTED BUSINESSES. (a) No person is entitled to a tax exemp-
21 tion under this chapter if

22 (1) a predecessor exempted business, as defined in (e) of
23 this section, is dissolved, liquidated, or ceases to operate before the
24 filing by the person of an application for tax exemption, or shall, after
25 the filing of the application but before the close of the tax exemption
26 period otherwise applicable to the person, be dissolved, liquidated,
27 or ceases to operate for more than six consecutive months for a cause
28 except strikes, war, action of a government or the elements, or other
29 cause beyond the control of the predecessor exempted business;

1 (2) after the filing of the application but before the close
2 of the tax-exemption period otherwise applicable to the person, the
3 annual production, output, or the operation of a predecessor exempted
4 business is diminished for any cause except strike, war, action of a
5 government or the elements, or other cause beyond the control of the
6 predecessor exempted business by 25 per cent or more as compared with
7 its average annual production, output, or operation during the three-
8 year period ending with the close of the taxable year of the predecessor
9 exempted business preceding the filing of the application for tax exemp-
10 tion, or for the part of the period that is applicable; or

11 (3) the person, through the renewable resource unit estab-
12 lished or to be established, utilizes physical facilities including land,
13 buildings, machinery, equipment, inventory or supplies of a value of
14 \$5,000 or more previously used by a predecessor exempted business, except
15 that this subsection does not apply if the department determines that
16 the use of the physical facilities previously used by a predecessor
17 exempted business will be in the best interest of the state in view of
18 the nature of the facilities, the investment, the number of workers and
19 employees involved, and the amount of the payroll.

20 (b) The department shall require every applicant for tax exemp-
21 tion to make full disclosure, under oath, of facts required or appro-
22 priate to determine whether or not the applicant's operations or proposed
23 operations will violate this section. Every grant of tax exemption under
24 this chapter shall require that at no time during the life of the grant
25 shall the grantee violate this section.

26 (c) The provisions of (a)(3) of this section do not apply if
27 facilities are used in common by two or more renewable resource units
28 under sec. 130 of this chapter.

29 (d) A person who intentionally commits or attempts to commit,

1 on his own behalf or on behalf of another person, a breach of the pro-
2 visions of this section is guilty of a felony, and upon conviction is
3 punishable by a fine of not more than \$1,000, or by imprisonment for
4 not more than five years, or by both, together with the costs of pro-
5 secution. A tax exemption previously granted to such a person is subject
6 to mandatory revocation by the department, following the procedure estab-
7 lished by sec. 60(d) - (f) of this chapter. All net income previously
8 reported or earned as renewable resource development income by the person
9 whether or not distributed and distributions from it are subject to
10 normal tax and surtax as of the date when the taxes were otherwise due
11 and payable. All other taxes exempted under sec. 10 of this chapter
12 become due and payable as of the date when, but for the tax exemption,
13 they would have become due and payable. The taxes shall be assessed and
14 collected in accordance with the provisions of the tax laws in force.

15 (e) In this section, a predecessor exempted business means a
16 business which

17 (1) is enjoying or has enjoyed tax exemption;

18 (2) as the source of its renewable resource development in-
19 come, produced a manufactured product or conducted operations substan-
20 tially similar to the manufactured product or operations to be produced
21 or conducted by the person filing the subsequent application for tax
22 exemption; and

23 (3) for the purpose of applying (a)(1) and (2) of this section
24 is or was owned to the extent of 10 per cent or more of its outstanding
25 stock or other proprietary interest by the person filing the subsequent
26 application for tax exemption or by one or more of its stockholders or
27 proprietors owning stock or other proprietary interest to the extent of
28 10 per cent or more. For the purposes of this subsection, the ownership
29 of stock or other proprietary interest shall be determined in the manner

1 provided by the rules concerning the ownership of stock or corporations
2 or of participation in partnerships under the income tax laws in force
3 in the state.

4 Sec. 43.27.100. APPEALS. (a) A grantee adversely affected or
5 aggrieved by the action taken by the department revoking or cancelling
6 a tax exemption granted under secs. 60(d) - (f) and 90 of this chapter
7 is entitled to judicial review of the action by filing an appeal with
8 the superior court within 30 days after the final decision or adjudi-
9 cation by the department.

10 (b) Pending judicial review, the department may, if it finds that
11 justice requires, postpone the effective date of the action taken by
12 it upon such conditions as may be required and to the extent necessary
13 to prevent irreparable injury. If a postponement is applied for and
14 denied, the court may issue all necessary and appropriate process to
15 postpone the effective date of the action taken by the department or to
16 preserve the status or rights of the parties pending conclusion of the
17 review proceedings, after bond is given in favor of and acceptable to
18 the Department of Revenue, in the amount of the taxes exempted and unpaid
19 plus interest and penalties, and interest computed for a period of one
20 year at the rate of six per cent a year.

21 Sec. 43.27.110. TERMINATION DATE FOR APPLICATIONS FOR EXEMPTION.
22 Applications for tax exemptions under this chapter shall be received by
23 the department until midnight of June 30, 1987, but not after that date.

24 Sec. 43.27.120. DISCRETION OF DEPARTMENT TO GRANT OR REFUSE TAX
25 EXEMPTIONS. (a) The department may refuse the tax exemption in any of
26 the cases listed in sec. 150(a)(4)(A) - (C) of this chapter if, in its
27 judgment, the commodity produced or to be produced by the applicant will,
28 because of its use or other factors, displace, or, with a substantial
29 advantage by reason of the tax exemption, compete with commodities

1 produced by businesses established in the state, or the exemptions will
2 jeopardize the financial condition of a political subdivision.

3 (b) Notwithstanding (a) of this section, the department may grant
4 the tax exemption if, in its judgment, the eligible petitioning busi-
5 ness substantially benefits the general economy of the state on the
6 basis of anticipated substantial increases in production to (1) supply
7 markets outside the state; or (2) supply an existing demand in the state
8 which has not been previously supplied in substantial quantities, and in
9 view of the investment, technology and new jobs involved.

10 (c) In granting tax exemption to a business under these circum-
11 stances, the department may, on petition of an interested party filed
12 before the final finding, grant the exemption to other existing busi-
13 nesses which manufacture similar commodities and, in its judgment, will
14 be substantially affected by the substitution or competition.

15 (d) In the case of an application filed under sec. 150(a)(4)(A)
16 of this chapter, if the department determines that a former exemption
17 for the same product granted under sec. 150(a)(4)(A) of this chapter was
18 granted under circumstances likely to give rise later to a substantial
19 question as to whether or not the product should have been considered
20 as a new product within the provisions of that section in view of a
21 further consideration of all available data with respect to production
22 and production facilities and the nature of the differences on which the
23 former exemption was granted, a grant of exemption on the petition is
24 effective for a term which expires not later than the latest termination
25 date of an exemption in force with respect to the same product, and
26 includes the same tax exemption privileges as are provided in the grant
27 in force. Nothing in this provision prevents the department from finding
28 that the application is eligible on other grounds.

29 (e) The department may, in any case, refuse an application,

1 notwithstanding the eligibility of the product or property under this
2 chapter, if it finds, in the light of the facts submitted for considera-
3 tion in the proceedings provided by this chapter, and after the applicant
4 has had the opportunity to make a full presentation with respect to the
5 questions in dispute, that the application conflicts with the public
6 interest of the state on the ground that the applicant is not organized
7 in good faith in view of the type and the reputation of the persons
8 constituting the applicant, the plans and methods for raising funds,
9 the plans and methods of distribution and sale of the product to be
10 manufactured, the nature and intended use of the product, and other
11 factors which reasonably indicate a likelihood that the grant of the
12 exemption would be misused to the prejudice of the interest of the people
13 of the state, and that, consequently, the public interest of the state
14 would be adversely affected by the grant.

15 Sec. 43.27.130. USE OF COMMON FACILITIES. (a) The department may
16 grant authorization for a plant, factory, or operation to use major
17 facilities in common with other renewable resource units if the depart-
18 ment determines, after consulting with the Department of Natural Re-
19 sources, that the common use is necessary or convenient for the
20 development of the economy and welfare of the state because it will

21 (1) provide increased opportunities for work in either or
22 both renewable resource units;

23 (2) add substantially to the state's net income, and

24 (3) result in a substantial investment in equipment,
25 machinery and supplies, comparable to the investment in the original
26 unit, less the value of the facilities to be used in common.

27 (b) The tax exemption of a renewable resource unit which provides
28 major or minor facilities to be used in common by other renewable re-
29 source units shall not extend over longer periods than those prescribed

1 in sec. 10 of this chapter with respect to the facilities being used
2 in common.

3 (c) If the renewable resource unit providing major or minor
4 facilities to be used in common by other renewable resource units does
5 not have a tax exemption, but an exemption is obtained by the unit using
6 the facilities, the department may grant tax exemption with regard to
7 the facilities, except that the tax exemption is limited to a part of
8 the value of the facilities and a part of the compensation received for
9 the use of the facilities, in proportion to the use made of the facili-
10 ties by the renewable resource unit which has a tax exemption. The
11 determinant factors of the use include space occupied, time and nature
12 of use, and the importance it bears on the renewable resource unit or
13 units using the facilities.

14 Sec. 43.27.140. EXEMPTIONS UNDER EARLIER LAWS. The exemptions
15 granted, in whole or in part, and all classifications made under sec. 6,
16 ch. 10, SLA 1949, and ch. 33, SLA 1953, shall remain in full force and
17 effect upon the terms and for the periods granted, and shall be binding
18 upon the state, and all cities, municipalities, school districts, public
19 utility districts, and other taxing units in which the property which is
20 the subject of classification or exemption is located. The exemptions
21 so granted or classifications so made shall apply to all taxes levied
22 and assessed by the city, municipality, school district, public utility
23 district, state, or other taxing units where the property is located,
24 as fully as though they had been granted or made under the provisions
25 of this chapter.

26 Sec. 43.27.150. DEFINITIONS. (a) In this chapter, unless the
27 context otherwise requires,

28 (1) "commissioner" means the commissioner of commerce and
29 economic development;

1 (2) "department" means Department of Commerce and Economic
2 Development;

3 (3) "designated articles" includes the following articles or
4 businesses:

5 (A) lumber,

6 (B) handicrafts,

7 (C) agricultural products,

8 (D) manufactured articles from fur or native skins,

9 (E) fishery products including fish, crab, shrimp, and
10 clams;

11 (4) "eligible business" means

12 (A) a renewable resource unit established after July 1,
13 1977, having as its objective the production on a commercial scale
14 in the state of a designated article, and which, in the judgment
15 of the department

16 (i) is established in good faith and with a per-
17 manent character, and

18 (ii) produces, or will produce, on a sustained
19 basis, within a reasonable time, a substantial amount of a desig-
20 nated article additional to the amount of the same articles being
21 produced by other renewable resource units in operation in the
22 state; in determining the amount of the production in the state of
23 these articles, the department shall use the average production in
24 the state of these articles for the three calendar years immediately
25 preceding July 1, 1977;

26 (B) a renewable resource unit established before July 1,
27 1977, engaged in the production of a designated article in the
28 state on a commercial scale if

29 (i) tax exemption has been granted to a new

1 renewable resource unit under the terms of this chapter to produce
2 the same designated article, and

3 (ii) the new renewable resource unit has begun
4 production on a commercial scale;

5 (C) property devoted to renewable resource development;

6 (5) "exempted business" means a business established or pro-
7 posed to be established in the state by a person and which is an eligible
8 business and has been declared exempt by the department;

9 (6) "renewable resource development income" means the net
10 income derived

11 (A) from the production of a product that gives rise to
12 the exemption of an exempted business under (a)(3)(A) - (B) of this
13 section,

14 (B) under (a)(4)(C) of this section;

15 (7) "renewable resource unit" means a plant, factory, or
16 operation which has a capacity to perform the major functions involved
17 in the production of a product on a commercial scale; a plant, factory,
18 or operation may be considered a separate renewable resource unit even
19 though it uses, in common with other renewable resource units,

20 (A) minor facilities such as sections of buildings,
21 power plants, warehouses, material conveyors, or other minor produc-
22 tion facilities, or

23 (B) major facilities, if the department authorizes the
24 common use of the facilities, as provided in sec. 130 of this chap-
25 ter;

26 (8) "production on a commercial scale" means production for
27 sale in the market in the normal course of business in quantities and
28 at the prices which justify the operation of a renewable resource unit
29 as a going business;

1 (9) "property devoted to renewable resource development" means

2 (A) real property, including land and improvements, or
3 a portion of it constructed or installed after July 1, 1977, either
4 by a private person or a government department, political subdivi-
5 sion, agency, or instrumentality, to be leased or placed at the
6 disposal of an exempted business so long as it is used for the de-
7 velopment, organization, construction, establishment, or operation
8 of an exempted business and if land is owned by a person other than
9 the person who owns, constructs, or installs the improvements on
10 it, both the land and improvements are "devoted to renewable re-
11 source development" when leased or made available to an exempted
12 business for the development, organization, construction, establish-
13 ment, or operation of the exempted business;

14 (B) all equipment or machinery belonging to a private
15 person or a government department, political subdivision, agency
16 or instrumentality, necessary or convenient to and installed or used
17 under a contract or lease, use, usufruct or other contract, by an
18 exempted business if, when the supplier is a private person, the
19 equipment or machinery is made available by a supplier normally
20 engaged in making the machinery and equipment available under
21 terms other than by sale.

22 (b) The other terms used in this chapter, unless otherwise speci-
23 fically provided, have the same meaning as used in a similar context
24 in the tax laws of the state and the regulations issued under the tax
25 laws.

26 Sec. 43.27.160. SHORT TITLE. This chapter may be cited as the
27 Alaska Renewable Resource Development Incentive Act.

28 CHAPTER 28. RENEWABLE RESOURCE INCENTIVE TAX CREDITS ACT.

29 Sec. 43.28.010. TAX CREDITS AUTHORIZED. (a) A person who has

1 established and owns or proposes to establish and own an eligible
2 business is entitled to a tax credit not to exceed 50 per cent of the
3 value of the investment made in the business as of the date it commenced
4 operation. The grant of tax credit shall be effective for a period,
5 established by the commissioner, not to exceed 10 years from the date of
6 grant and shall be applied against the amount of certain taxes, as
7 determined by the department, due the state during that period as a
8 result of the development, organization, construction, establishment
9 and operation of the specific business for which the credit is granted.
10 The unused portion of a tax credit authorized under this chapter shall
11 be forfeited at the expiration of the period of credit for which the
12 grant was made. Only one grant of tax credit shall be made for an
13 eligible business, irrespective of transfer of the business or other
14 circumstances. If a tax for which credit is given under this chapter
15 produces revenue shared with local political subdivisions, the state
16 shall pay to any affected subdivision the amount of revenue it would
17 receive had the tax credit not been given.

18 (b) The commissioner may by regulation classify and exclude from
19 investments qualifying for tax credit under this chapter investments in
20 an eligible business which are not of substantial benefit to the state
21 in furthering the purposes of renewable resource development. Adoption,
22 amendment, or modification of regulations under this subsection is not
23 subject to the procedural requirements of AS 44.62.180 - 44.62.290.

24 Sec. 43.28.020. APPLICATION FOR CREDIT. Application for a grant
25 of tax credit shall be made in a manner and upon forms prescribed by the
26 department. A grant of tax credit under this chapter shall be considered
27 a contract between the grantee and the state. The department may
28 determine the amount of the tax credit and the period for which the
29 credit applies. Then the department may attach such terms and conditions

1 to the credit as in its judgment will further the purposes of renewable
2 resource development.

3 Sec. 43.28.030. USE OF COMMON FACILITIES. (a) The department
4 may grant authorization for a plant, factory, or operation to use major
5 renewable resource facilities in common with other renewable resource
6 units if the department determines that the common use is necessary or
7 convenient for the development of the economy and welfare of the state
8 because it will

9 (1) provide increased opportunities for work in either or
10 both renewable resource units;

11 (2) add substantially to the net income of the state; and

12 (3) result in a substantial investment in equipment, machinery
13 and supplies, comparable to the investment in the original unit, less
14 the value of the facilities to be used in common.

15 (b) If the renewable resource unit providing major or minor re-
16 newable resource facilities to be used in common by other renewable
17 resource units does not have a tax credit, but a tax credit is obtained
18 by the unit using the facilities, the department may grant a tax credit
19 with regard to the facilities, except that the tax credit is limited to
20 a part of the value of the facilities and a part of the compensation
21 received for the use of the facilities, in proportion to the use made
22 of the facilities by the renewable resource unit which has a tax credit.
23 The determinant factors of the use include space occupied, time and
24 nature of use, and the importance the use bears on the renewable resource
25 unit or units making use of the facilities.

26 Sec. 43.28.040. ADMINISTRATION. (a) The commissioner shall
27 appoint the personnel necessary to carry out this chapter. The commis-
28 sioner shall make arrangements for such public hearings as he considers
29 necessary and shall require an applicant for a tax credit to present

1 evidence that will justify the credit.

2 (b) The commissioner or another person whom the commissioner
3 designates shall hear the evidence presented in relation to an applica-
4 tion for tax credit; he may summon witnesses and take their testimony
5 as to facts related to the tax credit applied for, and administer an
6 oath to the person testifying before him; he shall make a report to the
7 department on the evidence, together with his recommendations.

8 (c) The department shall adopt regulations it considers necessary
9 to carry out the purposes of this chapter. The regulations shall be
10 published in newspapers necessary to guarantee general circulation in
11 the state.

12 (d) To enforce compliance with this chapter, the department may
13 require periodic reports from the grantee of a tax credit and may at
14 reasonable intervals inspect the books of the eligible business for which
15 the credit has been granted.

16 (e) All decisions and findings of the department under this chap-
17 ter are final and no judicial or administrative appeal or other pro-
18 ceeding lies against them unless otherwise specifically provided in
19 this chapter or by regulation.

20 Sec. 43.28.050. REVOCATION OF TAX CREDIT. (a) After furnishing
21 notice and opportunity to be heard to the grantee of a tax credit un-
22 der this chapter, the department may revoke the grant if

23 (1) the business for which the tax credit is granted ceases
24 to be an eligible business;

25 (2) the department determines that the grantee of a tax
26 credit has falsely or fraudulently represented facts or circumstances
27 upon which grant of the credit was predicated in whole or in part, or
28 the department determines that the grantee has used the tax credit for
29 taxes upon a business not included in the application upon which the

1 credit was granted;

2 (3) the grantee of a tax credit fails to comply with a condi-
3 tion or term of the grant or a provision of this chapter or a regulation
4 adopted under it; or

5 (4) a transfer of shares of stock or partnership participa-
6 tion in an eligible business is made which represents a change of control
7 in the business, except

8 (A) a transfer by will or by operation of the laws of
9 inheritance,

10 (B) a transfer made solely to create security for bona
11 fide indebtedness, or

12 (C) a transfer by operation of law or court order to a
13 trustee in bankruptcy or receiver.

14 (b) Upon revocation of a grant of tax credit, all taxes which,
15 except for the tax credit, would have been due the state after revocation
16 shall be assessed and collected and paid in accordance with the provisions
17 of the tax laws.

18 (c) A person aggrieved by department action revoking a grant of
19 tax credit may seek judicial review of the action by filing an appeal
20 with the superior court within 30 days after final determination by the
21 department. Pending judicial review, the department may postpone the
22 effective date of the action taken by it upon such conditions as may be
23 required and to the extent necessary to prevent irreparable injury. If
24 a postponement is applied for and denied, the court may issue appropriate
25 process to postpone the effective date of the action taken by the depart-
26 ment or to preserve the status or rights of the parties pending conclu-
27 sion of the review proceedings. Postponement by the court shall be
28 conditioned upon the giving of acceptable bond to the department in an
29 amount equal at least to the amount of taxes credited before revocation

1 plus interest and penalties as provided by the tax laws.

2 Sec. 43.28.060. PENALTY. A person who fraudulently represents
3 facts or circumstances upon which a grant of tax credit is predicated in
4 whole or in part is guilty of a misdemeanor and upon conviction is
5 punishable by a fine of not more than \$1,000, or by imprisonment for not
6 more than one year, or by both.

7 Sec. 43.28.070. TERMINATION DATE FOR APPLICATIONS. An application
8 for a grant of tax credit under this chapter shall be received by the
9 department until midnight of June 30, 1982, but not after that date.

10 Sec. 43.28.080. GRANT OF TAX CREDIT BY POLITICAL SUBDIVISION.
11 With respect to taxes levied by it, a political subdivision of the state
12 may award grants of tax credit in the same manner and subject to the
13 same restrictions as provided for the department under this chapter,
14 except that the amount of tax credit granted may not exceed 25 per cent
15 of the value of the investment made in the business as of the date it
16 commences operation, and a political subdivision shall levy and collect
17 at least a real and personal property tax millage on the assessed valua-
18 tion of the property which is equal to at least seven mills.

19 Sec. 43.28.082. PUBLIC SCHOOL SUPPORT. (a) A business receiving
20 a tax credit under this chapter located within a political subdivision
21 that levies and collects a real and personal property tax millage on the
22 assessed valuation of property for the support of public schools which
23 is less than 10 mills shall pay to the state Department of Revenue the
24 difference between the millage rate levied and collected by the political
25 subdivision and 10 mills.

26 (b) The taxes levied by this section shall be effective for the
27 life of the grant of tax credit.

28 Sec. 43.28.090. EFFECT ON RENEWABLE RESOURCE TAX EXEMPTIONS.
29 Exemptions granted in whole or in part under the Renewable Resources

1 Development Incentive Act (AS 43.27) shall remain in full force and
2 effect upon the terms and for the periods granted. No renewable re-
3 source unit granted a tax exemption under any of those laws may qualify
4 for a grant of tax credit under this chapter, provided additional re-
5 newable resource units, which use facilities in common with a renewable
6 resource unit or units previously granted a tax exemption under those
7 laws or a tax credit under this chapter, may be granted a tax credit
8 if the unit qualifies as an eligible business as defined in this chapter.

9 Sec. 43.28.095. CONDITIONS FOR TAX CREDIT. (a) Notwithstanding
10 any other provisions in this chapter, a person shall meet the following
11 provisions of this section as a condition of qualifying for a tax credit
12 set out in this chapter:

13 (1) A person seeking tax credit status under this chapter
14 shall set up and maintain an on-the-job training program approved by
15 the Department of Labor aimed at qualifying Alaska residents presently
16 lacking in the requisite technical skills of the activity carried on.
17 This training program shall be geared so that Alaska residents comprise
18 50 per cent of the employees at the end of the first year of tax credit.
19 Alaska residents shall comprise 60 per cent of the employees at the end
20 of the second year of tax credit and 70 per cent at the end of the third
21 year of tax credit.

22 (2) The department shall set up procedures to be followed by
23 the person seeking tax credit status under this section and shall certify
24 to the Department of Commerce and Economic Development those persons
25 qualifying for this status. In no case may the Department of Commerce
26 and Economic Development grant tax credit status to a person coming under
27 the provisions of this section without first receiving certification from
28 the department nor continue this status after revocation of certification
29 by the department.

1 (3) The department shall hold formal hearings for those
2 persons to whom it denies certification. The purpose of these hearings
3 is to hear evidence on the reasons for a person failing to qualify under
4 this section. In order to obtain a reversal of the denial, the person
5 denied certification must show by convincing evidence that he is unable
6 to comply with this section because

7 (A) the specific activity engaged in requires a greater
8 percentage of trained personnel than the guidelines for resident
9 hiring permits and these trained personnel are not available in the
10 state in great enough number to make out-of-state recruiting un-
11 necessary; or

12 (B) even though the person applying for tax credit status
13 has set up an on-the-job training program approved by the depart-
14 ment, he has been unable to meet the resident guideline requirements
15 due to the inability of the local labor market to supply enough
16 trainable personnel.

17 (4) A person certified for tax credit status who subsequently
18 fails to comply with the training and hiring practices set out in this
19 section, upon a finding by the department of this failure, forfeits this
20 status. However, if the person seeking tax credit status, within a
21 reasonable time during the first year of exemption, has made application
22 to the department for a hearing to show cause why he will be unable to
23 comply with the training and hiring provisions of this section and the
24 department determines that the failure is excusable under this section,
25 the department shall permit a maximum of six months to comply with the
26 training and hiring practices before withdrawing certification and
27 causing the credit to lapse. Extensions of time for compliance shall
28 be added on to the overall time requirements in the second and third
29 years so that a person need not comply with the higher percentages until

1 the expiration of his extension plus the year allowed in this section.

2 (5) A person having certification revoked under (4) of this
3 subsection may apply to the department for a hearing to show cause for
4 recertification within six months of the revocation.

5 (b) In this section

6 (1) "department" means the Department of Labor;

7 (2) "resident," at the end of the first year of tax credit,
8 means a person who has been domiciled in Alaska for at least one year
9 immediately before the granting of the tax credit to the business;
10 "resident," at the end of the second and third year of tax credit, means
11 a person who has been domiciled in Alaska for at least one year either
12 immediately before the granting of the tax credit to the business or
13 after the granting of the tax credit to the business.

14 (c) A person holding a tax credit granted before the effective
15 date of this section is not subject to the provisions of this section.

16 Sec. 43.28.100. DEFINITIONS. In this chapter

17 (1) "commissioner" means the commissioner of commerce and
18 economic development;

19 (2) "department" means the Department of Commerce and Economic
20 Development, except as provided in sec. 95 of this chapter;

21 (3) "eligible business" means

22 (A) a renewable resource unit established after July 1,
23 1977, and having as its objective the production on a commercial
24 scale in the state of a designated article, and which, in the judg-
25 ment of the department

26 (i) is established in good faith and with a perma-
27 nent character, and

28 (ii) produces, or will produce, on a sustained basis,
29 within a reasonable time, a substantial amount of a designated

1 article additional to the amount of the same articles being produced
2 by other renewable resource units in operation in the state; in
3 determining the amount of the production in the state of these
4 articles, the department shall use the average production in the
5 state of these articles, for the three calendar years immediately
6 preceding July 1, 1977; or

7 (B) a renewable resource unit established before July 1,
8 1977, engaged in the production of a designated article in the state
9 on a commercial scale if

10 (i) tax credit has been granted to a new renewable
11 resource unit under the terms of this chapter to produce the same
12 designated article, and

13 (ii) the new renewable resource unit has begun
14 production on a commercial scale;

15 (4) "renewable resource unit" means a plant, factory, or
16 operation which has a capacity to perform the major functions involved in
17 the production of a product on a commercial scale and land which is
18 necessary to perform these functions; a renewable resource unit may not
19 include business inventories, company stores or company housing, or land
20 devoted to company stores or company housing; a plant, factory, or other
21 operation may be considered a separate renewable resource unit even
22 though it uses, in common with other renewable resource units,

23 (A) minor facilities such as sections of buildings,
24 power plants, warehouses, material conveyors, or other minor produc-
25 tion facilities, or

26 (B) major facilities, if the department authorizes the
27 common use of the facilities, as provided in sec. 30 of this chap-
28 ter;

29 (5) "production on a commercial scale" means production for

1 sale in the market in the normal course of business in quantities and at
2 prices which justify the operation of a renewable resource unit as a
3 going business;

4 (6) "designated articles" includes but is not limited to the
5 following articles or businesses:

6 (A) lumber,

7 (B) handicrafts,

8 (C) agricultural products,

9 (D) manufactured articles from fur or native skins,

10 (E) fish products,

11 (F) livestock raising;

12 (7) "political subdivision" means a home rule or general law
13 organized borough or city;

14 (8) "value" means value as determined by the department.

15 Sec. 43.28.110. SHORT TITLE. This chapter may be cited as the
16 Alaska Renewable Resource Incentive Tax Credit Act.

17 * Sec. 2. AS 43.25 and 43.26 are repealed.
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