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Referred: Judiciary

Original sponsors: Hayes and Szymanski

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 258 (SA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a special investment tax credit;  
7 and providing for an effective date."

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

9 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds  
10 and declares that

11 (1) development of gas processing facilities in the state will  
12 promote full and stable employment, promote the creation of export markets  
13 for the natural energy resources of the state, and promote the long-term  
14 development of other natural resources in the state;

15 (2) it is in the statewide public interest, and is declared to  
16 be a public purpose, to promote the prosperity and general welfare of all  
17 citizens of the state by stimulating the development of gas processing  
18 facilities in the state;

19 (3) it is further in the statewide public interest, and is  
20 declared to be a public purpose, to promote the exploration, drilling of  
21 wells, development, and mining of minerals and other natural deposits  
22 (other than oil and gas) in the state, to assist the state by diversifying  
23 its economy, to make it less dependent on oil and gas, provide increased  
24 employment opportunities and provide an incentive for investment in the  
25 state; and

26 (4) the establishment of a special investment tax credit is  
27 necessary in order to promote and accomplish the objectives listed in (1) -  
28 (3) of this section.

29 \* Sec. 2. AS 43.20.021(d) is amended to read:

1 (d) Where a credit allowed under the Internal Revenue Code is  
2 also allowed in computing Alaska income tax, it is limited to 18  
3 percent for corporations of the amount of credit determined for fed-  
4 eral income tax purposes which is attributable to Alaska. This limi-  
5 tation shall not apply to the credits allowed by AS 43.20.036(j) and  
6 (k).

7 \* Sec. 3. AS 43.20.036(b) is repealed and reenacted to read:

8 (b) For purposes of calculating the income tax payable under  
9 this chapter, the taxpayer may apply as a credit against tax liability  
10 the investment credit allowed as to federal taxes under 26 U.S.C. 38  
11 (Internal Revenue Code) upon only the first \$20,000,000 of qualified  
12 investment, other than qualified investment for the special investment  
13 tax credits under (j) - (1) of this section, put into use in the state  
14 for each taxable year. This limitation does not apply to the amounts  
15 invested in equipment that meets the definition of a certified pollu-  
16 tion control facility as defined in 26 U.S.C. 169(d) (Internal Revenue  
17 Code) as in effect on June 19, 1975, except that the date specified in  
18 26 U.S.C. 169(d) (Internal Revenue Code) as a condition of qualifying  
19 a certified pollution control facility for a deduction does not apply.  
20 A taxpayer entitled to the special investment tax credits under (j) -  
21 (1) of this section is allowed the investment tax credit upon only the  
22 first \$250,000,000 of qualified investment put into use in the pro-  
23 jects specified in those subsections in the state for each taxable  
24 year. A taxpayer claiming the special investment tax credits under  
25 (j) - (1) of this section may not claim additional investment tax  
26 credits under this subsection.

27 \* Sec. 4. AS 43.20.036 is amended by adding new subsections to read:

28 (j) Subject to (1) of this section for purposes of calculating  
29 income tax payable under this chapter the taxpayer may apply as a

1 credit against a tax liability for each taxable year up to 100 percent  
2 of the investment credit allowed as to federal taxes under 26 U.S.C.  
3 38 (Internal Revenue Code) on qualified investment put into use in the  
4 state for a gas processing project. For the purposes of this para-  
5 graph, "gas processing project" means the integrated plant facilities  
6 and equipment, including pollution control equipment, used for (1)  
7 conditioning, fractionation, storage and handling of gas, (2) prepara-  
8 tion of consumer or transportation gas, or (3) processing a product,  
9 other than crude oil, of an oil or gas well, into liquefied natural  
10 gas, methanol, ammonia, urea, olefins, propanes, butanes, polymers and  
11 intermediate hydrocarbon products. It does not include a pipeline  
12 from oil and gas wells to or from a plant and facilities. No credit  
13 shall be allowed under this subsection for an investment credit that  
14 is allowed as to federal taxes for leased property by reason of 26  
15 U.S.C. 168(f)(8) (Internal Revenue Code).

16 (k) Subject to (1) of this section for purposes of calculating  
17 income tax payable under this chapter the taxpayer may apply each  
18 taxable year as a credit against a tax liability up to 100 percent of  
19 the investment credit allowed as to federal taxes under 26 U.S.C. 38  
20 (Internal Revenue Code) on qualified investment put into use for a  
21 project in the state for each taxable year for exploration, drilling  
22 of wells, development, or mining of the minerals and other natural  
23 deposits listed in 26 U.S.C. 613(b)(Internal Revenue Code), except  
24 that the mining of sand or gravel is not eligible for credit unless it  
25 is ancillary to a mining development involving a qualified natural  
26 deposit other than sand or gravel. For the purpose of this sub-  
27 section, "mining" has the meaning given in 26 U.S.C. 613(c)(2)  
28 (Internal Revenue Code). No credit shall be allowed under this  
29 subsection for any investment credit that is allowed as to federal

1 taxes for leased property by reason of 26 U.S.C. 168(f)(8) (Internal  
2 Revenue Code).

3 (1) A taxpayer may not claim an investment tax credit under (j)  
4 or (k) of this section unless the project has been approved by the  
5 commissioner before investment by the taxpayer. To qualify for the  
6 credits, a taxpayer must apply to the department and present evidence  
7 at a public hearing conducted by the commissioner or an authorized  
8 representative. At the hearing, the taxpayer must show by a prepon-  
9 derance of evidence that the proposed project will provide an economic  
10 advantage to the state and that the project would not be viable with-  
11 out the granting of the special investment tax credits under (j) or  
12 (k) of this section. In demonstrating that the proposed project would  
13 provide an economic advantage to the state, the taxpayer must show  
14 that the investment would significantly diversify the local or state  
15 economy and that there exists within an area reasonably proximate to  
16 the site of the proposed project for which the investment is to be  
17 made at least three of the following: (1) a high level of  
18 unemployment; (2) an underutilized mineral, other than oil or gas; (3)  
19 an established infrastructure suitable for supporting the proposed  
20 project; (4) access to ice free ports; (5) substantial uncommitted  
21 reserves of natural gas. The department shall adopt regulations that  
22 establish the criteria for granting or denying the special investment  
23 tax credits. Evidence of investment in the proposed project before  
24 the making of an application to the department creates the rebuttable  
25 presumption that the project is viable without the granting of the  
26 credits. Following the hearing, the commissioner shall consider the  
27 evidence presented and may reject or approve the application in whole  
28 or in part. If the application is accepted, the commissioner shall  
29 establish the percentage of the federal investment tax credit to be

1 allowed for the project under (j) or (k) of this section and may  
2 impose additional restrictions on the taxpayer under regulations  
3 adopted by the department. Should the project of the taxpayer not  
4 conform substantially to the project plan submitted with its original  
5 application, the department shall give notice to the taxpayer of the  
6 nonconformity and the withdrawal of the authorization or adjustments  
7 to the terms of the authorization which will become final unless the  
8 taxpayer appeals within 30 days of the date the notice was mailed by  
9 the department to the taxpayer's address of record. Where the depart-  
10 ment has withdrawn the authorization, the taxpayer shall be liable for  
11 and shall pay to the department the full amount of the special invest-  
12 ment tax credits under (j) and (k) of this section that have been  
13 applied against a tax liability plus interest on the amount at the  
14 rate prescribed in AS 43.05.225 from the date the credit was applied  
15 until repaid. A taxpayer may appeal in writing a notice of adjustment  
16 or withdrawal of authorization, to the commissioner. The commissioner  
17 may uphold the original authorization, withdraw the authorization or  
18 make adjustments to the terms of the authorization. The decision of  
19 the commissioner shall be final unless reversed or modified by the  
20 courts.

21 (m) The credit per taxable year allowed by (j) and (k) of this  
22 section shall not exceed (1) 100 percent of the initial \$1,000,000 of  
23 liability for tax attributable to income earned from the projects  
24 subject to the credits in (j) or (k) of this section, plus (2) 50  
25 percent of the liability for tax in excess of \$1,000,000 attributable  
26 to income earned from the projects subject to the credits in (j) or  
27 (k) of this section. Any unused portion of the credit shall be  
28 subject to the carry-forward provisions contained in 26 U.S.C.  
29 46(b)(3) (Internal Revenue Code).

- 1           (n) The credit allowed by (j) and (k) of this section shall be  
2           reported in the commissioner's annual report under AS 43.05.010(5).  
3       \* Sec. 5. AS 43.20.036(j) - (l) are repealed January 1, 1993.  
4       \* Sec. 6. This Act takes effect January 1, 1984.