

HB

184

HOUSE COMMITTEE REPORT

(11)

Date referred: 3/18/87

FURTHER REFERRALS:

DATE: 4/3/87
HB 184

The Finance Committee has considered

"An Act relating to individual tax credits."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

ADAMS Albert H. Adams

FOURCHOT Nat Fourchot

LARSON Ronald L. Larson

GOL Tate Gol

SWACK Ed Swack

HAMMER Ed Hammer

BOYER Mark Boyer

FRANK Frank

WALLIS Ray Wallis

SIGNING OTHER RECOMMENDATIONS:

RIEGER Steve Rieger No Recommendation

DAVIS Mark Davis

BROWN Tay Brown No Rec

Albert H. Adams
Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: HB 184

Publish Date: _____

Revision Date: _____

Agency Affected: Revenue

Title: An Act relating to individual tax credits

BRU: Enforcement

Sponsor: _____

Components: Enforcement Operations

Requestor: Finance Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: None required.

Prepared By: Thomas C. Williams

Phone: 465-2366

Division: Enforcement Division

Date: March 27, 1987

Approved by Commissioner: [Signature]

Date: 3/31/87

Agency: Revenue

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

HOUSE BILL NO. 184

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BJLL

6 For an Act entitled: "An Act relating to individual tax credits."

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

8 * Section 1. AS 43.20.012 is amended to read:

9 Sec. 43.20.012. LIMITATION ON APPLICATION OF CHAPTER; CREDITS.

10 The tax imposed by this chapter does not apply to individuals or to

11 fiduciaries. [HOWEVER, AN INDIVIDUAL MAY FILE A RETURN UNDER THIS

12 CHAPTER IN ORDER TO RECEIVE A TAX CREDIT UNDER AS 43.20.013.]

13 * Sec. 2. AS 43.05.085 and AS 43.20.013 are repealed.

Alaska State Legislature
House of Representatives



Official Business

Al Adams
Chairman
Committee on Finance

April 2, 1987

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

MEMORANDUM

TO: Members of the House Finance Committee
FROM: Representative Al Adams, Chair *AAA*
SUBJ: HB 184

This bill repeals the statutory authority for political contribution and child care credits. There are two attorney general opinions in your file that speak to the need to remove statutory authority. Although the 1986 opinion suggests that such authority does not need to be removed as long as no appropriation exists to pay for such credits, I feel that repealing the authority is a much cleaner approach. As you know, no funding has been provided for the program in this fiscal year nor is it requested for FY88.

Section 1 of the bill is technical. It removes the sentence that allows people to apply for credits even though the income tax does not apply to individuals.

Section 2 repeals the credit section (AS 43.20.013) and a related technical section (AS 43.05.085) about making lists of those who got credits public.

The bill has no fiscal impact.

Attachments: AG Opinions
Related Statutes
Fiscal Note

Sec. 43.20.012. Limitation on application of chapter; credits. The tax imposed by this chapter does not apply to individuals or to fiduciaries. However, an individual may file a return under this chapter in order to receive a tax credit under AS 43.20.013. (§ 2 ch 1 SSSLA 1980; am § 2 ch 2 SSSLA 1980)

Cross references. — For legislative findings and purpose of the enacting legislation, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the 1980 Tempo-

rary and Special Acts and Resolves. **Effect of amendments.** — The 1980 amendment made this section retroactive to January 1, 1979.

Sec. 43.20.013. Individual tax credits. (a) A resident individual is entitled to a tax credit not to exceed \$100 for

(1) a contribution made in a calendar year to a person or organization for use exclusively

(A) for a political campaign for a candidate for

(i) President or Vice President of the United States, whether or not the candidate will be voted on in a primary election in Alaska;

(ii) United States senator from Alaska;

(iii) United States representative from Alaska;

(iv) governor or lieutenant governor of Alaska;

(v) the Alaska legislature;

(vi) delegate to an Alaska constitutional convention;

(vii) electoral confirmation as a judge or justice of a court in Alaska;

or

(viii) municipal office in Alaska; or

(B) by a group seeking to influence the outcome of a ballot proposition or question in Alaska; and

(2) dues paid in a calendar year to a nonprofit organization organized primarily for the purpose of influencing elections in Alaska.

(b) A resident individual is entitled to a tax credit equal to 16 percent of the tax credit claimed by the individual on the federal income tax return of the individual for household and dependent care services necessary for gainful employment.

(c) The commissioner of revenue shall pay the amount of a tax credit allowed by this section to a resident individual who makes a return as provided in AS 43.20.012. A credit under this section shall be paid in the manner provided in AS 43.20.030(e) for the payment of refunds and payment may not be made without an appropriation for that purpose. (§ 2 ch 1 SSSLA 1980; am § 9 ch 1 SSSLA 1980; am § 2 ch 2 SSSLA 1980)

Cross references. — For legislative findings and purpose of the enacting legislation, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the Temporary and Special Acts.

Effect of amendments. — The first

1980 amendment substituted "\$100" for "\$50" in the introductory language of subsection (a).

The second 1980 amendment made this section retroactive to January 1, 1979.

(5) make recommendations and an annual report to the governor to be transmitted to the legislature concerning the condition, operation and functioning of the department and state laws relating to taxation and tax administration;

(6) adopt a seal and affix it to each order, process, or certificate issued by the commissioner;

(7) keep a record of each order, process, and certificate issued by the commissioner, and keep the record open to public inspection at all reasonable times;

(8) hold hearings and investigations necessary for the administration of state tax and revenue laws;

(9) hear and determine appeals involving income, excise, license, or other taxes levied under state laws and enter orders on the appeals which are final unless reversed or modified by the courts;

(10) require the attendance of witnesses and the production of necessary books, papers, documents, correspondence and other evidence at hearings;

(11) order the taking of depositions before a person competent to administer oaths;

(12) administer oaths and take acknowledgments;

(13) request the attorney general for rulings on the interpretation of the tax and revenue laws administered by the department;

(14) call upon the attorney general to institute actions for recovery of unpaid taxes, fees, excises, additions to tax, penalties and interest;

(15) issue warrants for the collection of unpaid tax penalties and interest and take all steps necessary and proper to enforce full and complete compliance with the tax, license, excise, and other revenue laws of the state;

(16) audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under AS 38.05;

(17) contract to manage the assets of the Alaska Resources Corporation as provided in AS 37.12.075, and administer the outstanding loan portfolio upon dissolution of the corporation. (§ 48-2-9 ACLA 1949; § 7-1-8 ACLA 1949; am § 3 ch 61 SLA 1980; am § 13 ch 161 SLA 1984)

Effect of amendments. — The 1984 amendment added paragraph (17).

Sec. 43.05.085. List of contributions. The commissioner of revenue shall prepare and furnish to the Alaska Public Offices Commission by July 1 of each year a list containing the total amount of contributions received by each candidate and group for which a credit was received by an individual under AS 43.20.013(a). The commis-

sioner shall also mail a copy of the list to each of the candidates and groups which were recipients of those credited contributions. The list becomes public information under AS 09.25.110 — 09.25.120 on its delivery to the Alaska Public Offices Commission. (§ 4 ch 76 SLA 1974; am § 111 ch 6 SLA 1984; am § 1 ch 10 SLA 1986)

Effect of amendments. — The 1984 amendment, substituted "Public Offices" for "Election Campaign" in the first sentence and made a series of internal reference and technical changes throughout the rest of the section.

The 1986 amendment substituted "contributions" for "contributors" in the catchline and rewrote the section.

Article 2. Fiscal Responsibilities.

Section

140. Bonds

190. [Repealed]

Sec. 43.05.140. Bonds. Before taking office, the commissioner of revenue shall furnish a bond to the state. The bond shall be approved by the attorney general and filed with the Department of Administration, and a copy of it shall be filed in the attorney general's office. The bond shall be conditioned that the principal will faithfully discharge the duties of the office, keep a strict, true and correct account of all money disbursed, and that the principal will properly account for it and will pay over to a successor or other person entitled by law to receive it all money or property in the hands or possession of the principal, in accordance with law; or, in default, that the parties executing the bond will pay to the state and others injured all damages, costs, and expenses resulting from the default. The surety on the bond shall be a surety company authorized to transact business in the state. All premiums for the commissioner of revenue's bond shall be paid by the state. The amount of the bond shall be \$200,000, but if the funds in the treasury of the state exceed the amount of the bond given by the commissioner of revenue, or if for any reason the governor and the Department of Administration consider the bond insufficient they shall notify the commissioner of revenue of that fact, and the commissioner of revenue shall give the additional bond with sufficient sureties, within the time and in the amount which the governor and the Department of Administration consider necessary for the safety of the state. (§ 7-1-4 ACLA 1949)

Editor's notes. — This section is set out above to correct an error in the main pamphlet.

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BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

September 10, 1986

Hon. Joe Josephson
Alaska State Senate
1526 'F' Street
Anchorage, AK 99501

OFFICE OF THE ATTORNEY GENERAL

ALASKA DEPARTMENT OF LAW

SEP 12 1986

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 278-3553

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1553

P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 455-3600

Re: Child care and political cam-
paign contributions

Dear Senator Josephson,

You have requested our advice concerning the effect of the legislature's failure to appropriate money to pay "refundable" credits to eligible persons who incur child care expenses or make political campaign contributions. These credits are payable under the provisions of AS 43.20.013. We presume that your question stems from an earlier opinion issued by this office that expressed some doubt whether persons who have already contributed to a political campaign before the credit program was denied funding have a vested right to receive payment of the credit. See 1984 Inf. Op. Att'y Gen. (Aug. 1, 1984; 663-84-0031).

In our 1984 opinion we observed: "So long as AS 43.-20.013 remains state law, individuals who expend money consistent with the law may have a claim against the state for their entitlement." *Id.* at 2. We reaffirm the foregoing statement. The failure of the legislature to fund the credit program will likely result in litigation. The crucial question is whether the litigants will prevail against the state treasury.

It is probable that contributions were made to campaigns before it was known that the legislature did not make a fiscal year 1987 appropriation to pay the credits. These contributors will undoubtedly claim that their right to reimbursement vested upon the date that they submitted proof that they contributed to a political campaign. To the extent that appropriations are available to pay those claims, the contention that the claim represents a vested right may be a good one. However, AS 43.20.-013(c) is very clear that the entitlement is conditioned on the availability of appropriations. AS 43.20.013(c) provides: "payment may not be made without an appropriation for that purpose." Our 1984 opinion can be distinguished by the fact that when that opinion was written, the legislature was attempting to repeal an

Hon. Joe Josephson
Alaska State Senate
Re: Child care/political contributions

September 10, 1986
Page #2

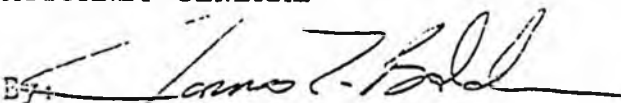
existing appropriation, not refusing to enact new appropriations.
It is also significant that the contributions are voluntary.

We believe that, absent a valid appropriation to finance the payment of political campaign or child care credits, the failure to appropriate money for the 1987 fiscal year effectively negates any entitlement to reimbursement.

If you have additional questions, do not hesitate to ask.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 

James L. Baldwin
Assistant Attorney General

JLB/pjg

cc: Hon. Frank Ferguson, Senator
Alaska State Legislature

Hon. Mary Nordale, Commissioner
Department of Revenue

MEMORANDUM

State of Alaska

TO: Hon. Mary Nordale, Commissioner
Department of Revenue

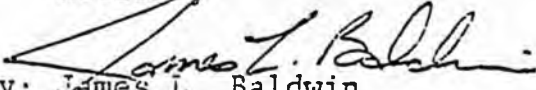
DATE: August 1, 1984

FILE NO: 366-031-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Enactment of appropriation to finance political campaign contribution credits

By: 
James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion concerning the availability of the appropriation made in chapter 3, SSLA 1980 to pay claims for political contribution credits under AS 43.20.013. That section provides for the refund of money contributed by individuals for use "exclusively for a political campaign for a candidate ... or by a group seeking to influence the outcome of a ballot proposition or question" AS 43.20.013(a). In addition, the section provides for the refund of 16 percent of the federal tax credit claimed by the individual for household and dependent care services necessary for gainful employment. AS 43.20.013(b). Apparently, the legislature attempted to prevent the payment of political campaign contributions by amending an earlier appropriation made to finance both political campaign and childcare credits. This action was taken in section 140 of HCS CSSB 409(Fin) am H (Reeng). Section 140 provides:

Sec. 140. Section 1, ch. 3, SSLA 1980 is amended to read:

Section 1. The sum of \$112,042,000 is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978 and

(2) for childcare [1979 AND 1980] tax credits payable under AS 43.20.013.

In section 140, the legislature attempted to accomplish two things. First, it makes the unobligated balance of the \$112,042,000 appropriation available for at least an additional claim year by removing the reference to the 1979 and 1980 claim

years */ and, second, it inserted the word "childcare" in the statement of purpose of the appropriation so that the major source of funding for the credit would be sabotaged.

We believe the extension of a lapse date is without question within the legislature's power to appropriate. However, the attempt to radically restrict the objects of expenditure under an existing appropriation is an abuse of the legislature's power because it constitutes an attempt to retroactively amend or repeal AS 43.20.013(a). The Department of Revenue advises that if this amendment is effective, no money remains available to pay refunds to individuals who have made political campaign contributions since 1979. Repeal of the credits established under AS 43.20.013 should be presented to the governor in a separate non-appropriation bill so that all of the safeguards specified by the Alaska Constitution for the enactment of bills into law are operative.

It is significant that AS 43.20.013(a) and (b) provide that individuals are "entitled" to these credits. The credits are commonly referred to as "refundable credits." The refundable credits represent a holdover from the now repealed individual income tax and represent refunds to individuals in the same manner as a refund of excess withholding. See AS 43.20.013(c). The program could be viewed as a reimbursement of money paid by individuals on behalf of the state to third persons, i.e., candidates or day care operators. The credit encourages individuals to directly provide financing for these worthwhile purposes. The program avoids or minimizes a direct state subsidy to these third persons and in effect makes the public a major source of financing for these activities. In return, the state reimburses the public. So long as AS 43.20.013 remains state law, individuals who expend money consistent with the law may have a claim against the state for their entitlement. We believe the legislature cannot retroactively defeat claims for refundable credits for the 1979 and 1980 claim years. See AS 01.10.100(a). We also believe that the legislature may not use its appropriation power to prospectively repeal the entitlement established under AS 43.20.013.

*/ The Department of Revenue has implemented AS 43.20.013 by the adoption of 15 AAC 20.042. These regulations permit an individual to claim a credit under AS 43.20.013 within three years after the year in which the contribution is made. By removing the claim years from the 1980 appropriation, we presume the legislature intended to reappropriate the unobligated balance of the appropriation for the 1984 claim year.

Hon. Mary Nordale, Commissioner
Department of Revenue
366-031-85

August 1, 1984
Page 3

The difficult part of your question concerns the power of the legislature to change the purpose of existing appropriations. It is common for the legislature to make clarifications of the purpose of an appropriation in response to circumstances which permit more effective use of the money. However, an amendment to an appropriation can never conflict with existing law or be used to extinguish an entitlement vested under general law. The Alaska Constitution prohibits the amendment or repeal of substantive law by the enactment of appropriations. Article II, section 13 of the Alaska Constitution provides in relevant part:

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title.

The purpose of the Framers in restricting appropriations bills to appropriations was to avoid the practice of "log-rolling." Alaska Constitutional Convention, Commentary on Legislative Article at 7, Committee Proposal No. 5 (Dec. 14, 1955). Logrolling occurs when a measure which could not command majority legislative support on its own merits is combined with another measure or measures, and cumulatively they obtain passage. It is a particularly insidious practice when it occurs through an appropriations bill, because appropriations bills often come before the legislature for a vote on final passage in a form which cannot be amended. Various courts have noted the evil inherent in the practice. Flanders v. Morris, 558 P.2d 769, 772 (Wash. 1977), ("It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation"); Sellers v. Frohmiller, 24 P.2d 666, 669 (Ariz. 1933).

There are other purposes of the "confinement" requirement in appropriations bills. The requirement prevents avoidance of the governor's item veto power by the inclusion, in an appropriation item, of material which actually is a "general law" measure:

The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power of substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation.

Hon. Mary Nordale, Commissioner
Department of Revenue
366-031-85

August 1, 1984
Page #4

Henry v. Edwards, 346 So. 2d 153, 158 (La. 1977).

Judge Carpeneti, in the only Alaska case to address the confinement issue, noted that it is extremely difficult to uncover the proper test to determine when an appropriation goes beyond what is permitted by the constitution. Legislative Budget and Audit Committee v. Hammond, No. 1JU-80-1163 CIV (Alaska Super., July 17, 1980), Memo. Decision at 40. Virtually every court which has been faced with this issue has announced that it should be decided on a "case by case" basis. As the Supreme Court of Nebraska said in deciding a confinement case:

All authorities are in agreement that it is impossible to fix exact limits in the area of constitutional separation of powers. All states approach the problem on a case-by-case basis.

State ex rel. Meyer v. State Board of Equalization and Assessment.

The Alaska Supreme Court has not yet decided a case raising a claim that particular amendment of an existing appropriation violates the constitutional requirement that bills for appropriations be confined to appropriations. There are cases construing the single subject rule, which is also found in article II, section 13, e.g., Short v. State, 600 P.2d 20 (Alaska 1979). However, because of the distinction between appropriation bills and other bills, the Alaska cases construing the single subject rule are of very little value in interpreting the confinement requirement. Legislative Budget and Audit, No. 1JU-80-1163 CIV at 42.

Appropriations bills may and almost always do include appropriations for several purposes. By definition they embrace many unrelated subjects. For this reason, the cases interpreting the single subject rule are of little direct assistance in interpreting the confinement requirement. It is probable that the Alaska Supreme Court would not automatically apply its single subject rule analysis to a confinement case, but would adopt a rule appropriate to confinement cases.

In Biles v. Department of Public Welfare, 403 A.2d 1341 (Pa. Comm. 1979), the court announced the following test for determining the propriety of material inserted in an appropriations Act:

To be constitutional the language in an appropriation bill must be germane to the appropriations,

Hon. Mary Nordale, Commissioner
Department of Revenue
366-031-85

August 1, 1984
Page #5

must not conflict with existing law, and it must not extend beyond the life of the appropriations bill itself.

Biles, 403 A.2d at 1343. While observing that the Biles test is "superficially attractive," Judge Carpeneti modified it because he felt "the test does not go far enough." Legislative Budget and Audit, No. 1JU-80-1163 CIV at 43. He reasoned that under the Biles test, the legislature could enact or repeal general law through an appropriations bill, and do so session after session, and completely render the confinement requirement meaningless.

After a careful review of relevant authority, the superior court expressed its view of the confinement provision by announcing the following test to be used in evaluating conditions added to appropriations:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is, appropriate, to an appropriation bill.

Legislative Budget and Audit, No. 1JU-80-1163 Mem. Decision at 44-45 (emphasis added, footnotes omitted).

Every instance where language is challenged in an appropriations bill is a new case which must be examined separately. Courts applying what appear to be similar tests to apparently similar facts reach opposite conclusions. Compare Welden v. Ray, 229 N.W.2d 706, 710 (Iowa 1975), with Henry v. Edwards, 346 So. 2d 153, 159-165 (La. 1977). We contend that the legislature may not indirectly repeal AS 43.20.013(a) by the amendment of the purpose of an appropriation. The constitution requires the legislature to place such a measure before the governor in a separate bill. Therefore, we believe you may ignore the purported amendment which limits the purposes for which the appropriation may be spent. We also find that there is no legislative intent to make the lapse date extension nonseverable from the other amendments contained in section 140. Under these circumstances, we believe the presumption of severability set out in AS 01.10.-030 controls.

JLE/pjg

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

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HOUSE BILL NO. 184

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FIFTEENTH LEGISLATURE - FIRST SESSION

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A BILL

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CHAPTER IN ORDER TO RECEIVE A TAX CREDIT UNDER AS 43.20.013.]

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