

**SB**

**2001**

**SFIN**

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**SENATE FINANCE COMMITTEE REPORT**  
**First Committee of Referral**

REPORTED OUT  
MAY 21 2006  
SENATE FINANCE COMMITTEE

DATE: 5/20/06

FURTHER:

Date of 5-Day Notice: 5/18/06/24hr.  
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 21 May 2006

Finance Committee considered SENATE BILL NO. 2001  
SB 2001 OIL AND GAS TAX

"An Act relating to the production tax on oil and gas and to conservation surcharges on oil; relating to criminal penalties for violating conditions governing access to and use of confidential information relating to the production tax; providing that provisions of AS 43.55 do not apply to certain oil and gas subject to a contract executed under the Alaska Stranded Gas Development Act; amending the definition of 'gas' as that definition applies in the Alaska Stranded Gas Development Act; making conforming amendments; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 2001 (FIN)
- adopt previous \_\_\_\_\_ CS CS forthcoming ( )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>CS Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
<b>SCS House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#

F/n forthcoming  
Revenue  
\$

Department	Date	Fiscal	Ind.	Zero	FN#
DNR	7/19/06			✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
		✓			
				✓	
		✓			
		✓			
COCHAIR:		✓			
COCHAIR:		✓			

# FISCAL NOTE

REPORTED OUT  
**MAY 21 2006**  
 SENATE FINANCE COMMITTEE

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STATE OF ALASKA  
 2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSSB 2001 (FIN)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title An Act Relating to the Production Tax on RDU Tax and Treasury  
Oil and Gas Component Tax  
 Sponsor Rules Committee  
 Requester Senate Finance Component No. 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	577.6	589.2	600.9	613.0	625.2	637.7
Travel						
Contractual	517.5	487.9	118.2	118.6	121.0	123.4
Supplies	42.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous [OH office, etc]	37.1	37.1	37.1	37.1	37.1	37.1
<b>TOTAL OPERATING</b>	<b>1,174.2</b>	<b>1,114.1</b>	<b>756.2</b>	<b>768.7</b>	<b>783.3</b>	<b>798.2</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )	See analysis section .....					
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF	1,174.2	1,114.1	756.2	768.7	783.3	798.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>1,174.2</b>	<b>1,114.1</b>	<b>756.2</b>	<b>768.7</b>	<b>783.3</b>	<b>798.2</b>

Estimate of any current year (FY2006) cost: \_\_\_\_\_  
 Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time	7	7	7	7	7	7
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Relative to Status Quo

This bill would amend the oil and gas production tax by basing the tax on the net value of the oil and gas. The net value is the wellhead value (net of royalty) less all qualified lease expenditures, including capital and operating costs, and property taxes. The net income would be subject to a 20% tax, less a credit of 20% which applies to capital costs upstream of the point of production. There would be an additional allowance of up to \$12 million per company for companies producing less than 50,000 barrels per day, which is scaled down to zero between 50,000 and 100,000 barrels per day. The allowance expires in 2016. In addition, as a transition provision, there would be a 20% credit for capital costs incurred over the period April 1, 2001 through April 1, 2006, recoverable at \$1 for every \$2 in capital expenditures. Transition costs cannot be recovered after 2013.

Prepared by: Dan Dickinson  
 Division: Tax Division

Phone: 269-1019  
 Date/Time: 5/21/06 5:30 AM

Approved by: Kevin Jardell  
 Agency: Office of the Governor

Date: 5/21/2006

FISCAL NOTE

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STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. CSSB 2001 (FIN)

ANALYSIS CONTINUATION

The additional conservation surcharge on oil is increased from 3 cents to 4 cents.

The bill would be effective July 1, 2006.

The figures in the table below reflect the revenues that would be received from the bill relative to the status quo under various prices. The figures reflect North Slope activity; the impact on Cook Inlet is expected to be modest. The status quo assumes the January 2005 ELF aggregation decision by the Department of Revenue for Prudhoe Bay continues.

The cost assumptions are as follows:

- \$100 mm/yr exploration
- \$1/bbl on-going capital on all barrels
- \$3.50/bbl developmental capital on 2/3 of existing conventional oil
- \$8/bbl developmental capital on 2/3 of existing heavy oil
- \$3.50/bbl developmental capital on new conventional oil
- \$8/bbl developmental capital on new heavy oil
- \$3/bbl operating cost on conventional oil
- \$5/bbl operating cost on heavy oil

The table shows the 2006-2012 receipts from the bill, sensitive to different oil prices. These include the Department of Revenue forecast, a \$40 price, and a \$60 price. (Note that the status quo numbers are slightly different from what is reflected in the Spring 2006 Revenue Sources Book because of volume adjustments from the oil spill, and because of some differences between what some taxpayers actually remit and what is ultimately expected to be collected.)

Operating expenditures include costs for 5 additional positions for auditors: 1 O & G Specialist (Range 23), 1 O & G Revenue Auditor IV (Range 22), and 3 O & G Revenue Auditor III (Range 20). These positions would be used to fulfill additional audit responsibilities inherent in a net profits tax, an amendment in the Senate regarding requires additional staff. In addition, we request 2 additional Tax Tech III positions (Range 14) to process additional information and tax returns that will be required, and additional credit applications anticipated. Personal Services reflect a 2% yearly increase.

Contractual expenditures include \$100,000 and \$70,000 for programming in FY 07 and FY 08, respectively. \$300,000 in each of FY 07 and FY 08 for help in writing regulations. \$100,000 in each year for consulting services and an estimate of chargeback costs. Supplies include computers and other supplies necessary for new positions.

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STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. CSSB 2001 (FIN)

ANALYSIS CONTINUATION (MILLIONS OF 2005 DOLLARS)

FISCAL NOTE

Fiscal Year	DOR Forecast	Col. 15 Status Quo Tax	Col. 16 Tax from Bill	Col. 17 Gain from Bill
2007	\$53.60	989	1,756	767
2008	\$46.90	759	1,340	581
2009	\$25.50	355	353	-2
2010	\$25.50	315	321	6
2011	\$25.50	281	318	36
2012	\$25.50	271	313	42
			32	32

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Fiscal Year	Medium Price	Status Quo Tax	Tax from Bill	Gain from Bill
2007	\$40.00	708	1,121	413
2008	\$40.00	655	1,095	440
2009	\$40.00	631	1,164	532
2010	\$40.00	582	1,132	551
2011	\$40.00	544	1,155	611
2012	\$40.00	536	1,163	628

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Fiscal Year	High Price	Status Quo Tax	Tax from Bill	Gain from Bill
2007	\$60.00	1,120	2,271	1,151
2008	\$60.00	1,032	2,217	1,185
2009	\$60.00	978	2,279	1,301
2010	\$60.00	901	2,231	1,330
2011	\$60.00	842	2,272	1,429
2012	\$60.00	831	2,292	1,460

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
Bill Version: SB 2001  
(S) Publish Date: 5/20/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
Title Relating to the production tax on oil and gas RDU Resource Development  
etc. Component Oil & Gas Development  
Sponsor Rules by Request of Governor  
Requester Governor Component No. 439

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 C F						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

There is no anticipated fiscal impact for DNR associated with implementation of this legislation.

Prepared by: Bill VanDyke, Acting Director Phone 907-269-8400  
Division: Oil & Gas Date/Time 5/19/2006  
Approved by: Michael Mengo, Commissioner Date 5/19/2006  
Agency: Natural Resources

SB 2001

5/20/06

Committee adopted amendments 1-4 & 6 - all conceptual

Upon adjournment of the meeting, I faxed the amendments to Legal with a request that they be incorporated into a new workdraft committee substitute.

Ginger Blaisdell, Staff to Co-Chair Green then informed me that she had directed Legal to deliver the CS workdraft to her. She indicated her intention was to then hold the CS. I asked if she planned to then proof and review the committee substitute to verify that the amendments were properly implemented. She responded that she would be closely reviewing the CS to ensure the multiple technical and conforming changes that the conceptual amendments would necessitate.

5/21/06

Shortly before the Committee's scheduled meeting, Ginger gave the CS, Version "G", to the Committee Page to be photocopied and distributed only to Members, but not to other Committee staff. I did not review the CS at this time.

The Committee adopted the CS after I asked Co-Chair Green if this was her intent. Amendments 7 - 12 were adopted and the CS was reported from Committee as amended.

I then faxed the remaining amendments to Legal with a request for a Final. Ginger phoned the bill drafter directly and ordered a final.

Ginger took temporary possession of the original conceptual amendments #1-4 and 6 - those amendments that had been faxed to Legal for inclusion in the workdraft CS. She indicated she needed them to assist her in preparing an explanation of the changes contained in the CS that Co-Chair Green would overview in the Senate floor session.

Shortly after this I learned that the language of Amendment #3 had not been implemented into the CS "G" in the manner directed by the conceptual language of the amendment. The language of the CS did not reflect the action of the Committee. The Committee action adopted the language of another bill, SB 305, Version "R"; specifically subsections (g) and (h) inserted to AS 43.55.011 in Section 5, with a modification of the percentage amount. Draft language of this amendment was also given to me by Ginger for reference purposes, but was not mentioned by the Committee or the sponsor of the amendment, Senator Stedman. The draft language contained the same intent as was stated in the motion. The inserted language provided the progressivity tax to be assessed when the gross price of oil reached \$50. It appears that the CS provides that the progressivity tax would be assessed on a net value of \$35, rather than the gross value.

Mindy Rowland, Senate Finance Committee Secretary

Adopted 5/2/06

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-GS2094G  
Bullock  
5/21/06

CS FOR SENATE BILL NO. 2001(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

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

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to the production tax on oil and gas and to conservation surcharges on  
2 oil; relating to criminal penalties for violating conditions governing access to and use of  
3 confidential information relating to the production tax; providing that provisions of  
4 AS 43.55 do not apply to certain oil and gas subject to a contract executed under the  
5 Alaska Stranded Gas Development Act; amending the definition of 'gas' as that  
6 definition applies in the Alaska Stranded Gas Development Act; making conforming  
7 amendments; and providing for an effective date."

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

9 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new section  
10 to read:

11 LEGISLATIVE INTENT. (a) It is the intent of the legislature through sec. 11 of this  
12 Act to confirm by clarification the long-standing interpretation of AS 43.55.020(f) by the  
13 Department of Revenue.

1 (b) It is the intent of the legislature that the division or other unit of the Department of  
2 Environmental Conservation assigned responsibility for administration of the programs under  
3 AS 46.08 that are principally supported by the conservation surcharges on oil levied under  
4 AS 43.55.201 - 43.55.299 and 43.55.300 - 43.55.310

5 (1) reduce program costs, including personnel costs, as necessary to operate  
6 within the revenue anticipated to be generated by those surcharges, in the amounts of those  
7 surcharges as amended by secs. 26 and 28 of this Act; and

8 (2) request appropriations for exceptional program needs and expansions  
9 beyond what can be provided from the estimated amounts collected from those surcharges  
10 from alternative funding sources.

11 \* Sec. 2. AS 43.05.230(f) is amended to read:

12 (f) A wilful violation of the provisions of this section or of a condition  
13 imposed under AS 43.55.040(1)(B) is punishable by a fine of not more than \$5,000,  
14 or by imprisonment for not more than two years, or by both.

15 \* Sec. 3. AS 43.20.031(c) is amended to read:

16 (c) In computing the tax under this chapter, the taxpayer is not entitled to  
17 deduct any taxes based on or measured by net income. The taxpayer may deduct the  
18 tax levied and paid under AS 43.55.

19 \* Sec. 4. AS 43.20.072(b) is amended to read:

20 (b) A taxpayer's business income to be apportioned under this section to the  
21 state shall be the federal taxable income of the taxpayer's consolidated business for the  
22 tax period, except that

23 (1) taxes based on or measured by net income that are deducted in the  
24 determination of the federal taxable income shall be added back; the tax levied and  
25 paid under AS 43.55 may not be added back;

26 (2) intangible drilling and development costs that are deducted as  
27 expenses under 26 U.S.C. 263(c) (Internal Revenue Code) in the determination of the  
28 federal taxable income shall be capitalized and depreciated as if the option to treat  
29 them as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) had not been  
30 exercised;

31 (3) depletion deducted on the percentage depletion basis under 26

1 U.S.C. 613 (Internal Revenue Code) in the determination of the federal taxable income  
2 shall be recomputed and deducted on the cost depletion basis under 26 U.S.C. 612  
3 (Internal Revenue Code); and

4 (4) depreciation shall be computed on the basis of 26 U.S.C. 167  
5 (Internal Revenue Code) as that section read on June 30, 1981.

6 \* Sec. 5. AS 43.55.011 is amended by adding new subsections to read:

7 (e) There is levied on the producer of oil or gas a tax for all oil and gas  
8 produced each month from each lease or property in the state, less any oil and gas the  
9 ownership or right to which is exempt from taxation or constitutes a landowner's  
10 royalty interest. Except as otherwise provided under (i) of this section, the tax is equal  
11 to 22.5 percent of the production tax value of the taxable oil and gas as calculated  
12 under AS 43.55.160.

13 (f) There is levied on the producer of oil or gas a tax for all oil and gas  
14 produced each month from each lease or property in the state the ownership or right to  
15 which constitutes a landowner's royalty interest, except for oil and gas the ownership  
16 or right to which is exempt from taxation. The provisions of this subsection apply to a  
17 landowner's royalty interest as follows:

18 (1) the rate of tax levied on oil is equal to five percent of the gross  
19 value at the point of production of the oil;

20 (2) the rate of tax levied on gas is equal to 1.667 percent of the gross  
21 value at the point of production of the gas;

22 (3) if the department determines that, for purposes of reducing the  
23 producer's tax liability under (1) or (2) of this subsection, the producer has received or  
24 will receive consideration from the royalty owner offsetting all or a part of the  
25 producer's royalty obligation, other than a deduction under AS 43.55.020(d) of the  
26 amount of a tax paid,

27 (A) notwithstanding (1) of this subsection, the tax is equal to

28 (i) for oil that is produced from a lease or property in  
29 the Cook Inlet sedimentary basin, five percent of the gross value at the  
30 point of production of the oil;

31 (ii) for oil, except oil described in (i) of this

1                   subparagraph, 22.5 percent of the gross value at the point of production  
2                   of the oil; and

3                   (B) notwithstanding (2) of this subsection, for gas the tax is  
4                   equal to 6.67 percent of the gross value at the point of production of the gas.

5                   (g) In addition to the taxes levied under (e) and (f) of this section, during each  
6                   month for which the price index determined under (h) of this section is greater than  
7                   zero, there is levied on the producer of oil or gas a tax for all oil and gas produced  
8                   during that month from each lease or property in the state, less any oil and gas the  
9                   ownership or right to which is exempt from taxation or constitutes a landowner's  
10                  royalty interest. Except as otherwise provided under (i) of this section, the tax levied  
11                  under this subsection is equal to .1 percent of the production tax value of the taxable  
12                  oil and gas as calculated under AS 43.55.160, multiplied by the price index  
13                  determined under (h) of this section.

14                  (h) For purposes of (g) of this section, the price index for a month is calculated  
15                  by subtracting 35 from the number that is equal to the quotient of the production tax  
16                  value of the taxable oil and gas produced during that month, as calculated under  
17                  AS 43.55.160, divided by the number of barrels of oil equivalent of that oil and gas.  
18                  For purposes of this subsection, a barrel of oil equivalent is a barrel of oil, in the case  
19                  of oil, or 6,000 cubic feet of gas, in the case of gas.

20                  (i) For a month that ends before April 1, 2021, the total tax levied by (e) and  
21                  (g) of this section on gas produced from a lease or property in the Cook Inlet  
22                  sedimentary basin may not exceed

23                         (1) for a lease or property that first commenced commercial production  
24                         of gas before April 1, 2006, the product obtained by multiplying (A) the amount of gas  
25                         produced during that month from the lease or property, times (B) the average rate of  
26                         tax that was imposed under this chapter on gas produced from the lease or property for  
27                         the 12-month period ending on March 31, 2006, times (C) the average prevailing value  
28                         for gas delivered in the Cook Inlet area for the 12-month period ending March 31,  
29                         2006, as determined by the department under AS 43.55.020(f);

30                         (2) for a lease or property that first commences commercial production  
31                         of gas after March 31, 2006, the product obtained by multiplying (A) the amount of

1 gas produced during that month from the lease or property, times (B) the average rate  
2 of tax that was imposed under this chapter on gas produced from all leases or  
3 properties in the Cook Inlet sedimentary basin for the 12-month period ending on  
4 March 31, 2006, times (C) the average prevailing value for gas delivered in the Cook  
5 Inlet area for the 12-month period ending March 31, 2006, as determined by the  
6 department under AS 43.55.020(f).

7 \* Sec. 6. AS 43.55.017(a) is amended to read:

8 (a) Except as provided in this chapter, the taxes imposed by this chapter are in  
9 place of all taxes now imposed by the state or any of its municipalities, and neither the  
10 state nor a municipality may impose a tax on [UPON]

11 (1) producing oil or gas leases;

12 (2) oil or gas produced or extracted in the state;

13 (3) the value of intangible drilling and development costs, as  
14 described in 26 U.S.C. 263(c) (Internal Revenue Code), as amended through  
15 January 1, 1974 [EXPLORATION EXPENSES].

16 \* Sec. 7. AS 43.55.020(a) is repealed and reenacted to read:

17 (a) Ninety-five percent of the total tax levied by AS 43.55.011(e) - (g), net of  
18 any credits applied under this chapter, is due on the last day of each calendar month on  
19 oil and gas produced from each lease or property during the preceding month. The  
20 remaining portion of the tax levied by AS 43.55.011(e) - (g), net of any credits applied  
21 under this chapter, is due on March 31 of the year following the calendar year during  
22 which the oil and gas were produced. An unpaid amount of tax that is not paid when  
23 due in accordance with this subsection becomes delinquent. An overpayment of tax  
24 with respect to a month may be applied against the tax due for any later month.  
25 Notwithstanding any contrary provision of AS 43.05.280, interest on an overpayment  
26 is allowed only from a date that is 90 days after the later of (1) the March 31 described  
27 in this subsection, or (2) the date that the statement required under AS 43.55.030(a)  
28 and (e) to be filed on or before that March 31 is filed. Interest is not allowed if the  
29 overpayment was refunded within the 90-day period.

30 \* Sec. 8. AS 43.55.020(b) is amended to read:

31 (b) The production tax on oil and [OR] gas shall be paid by or on behalf of the

1 producer.

2 \* Sec. 9. AS 43.55.020(d) is amended to read:

3 (d) In making settlement with the royalty owner for oil and gas that is  
4 taxable under AS 43.55.011, the producer may deduct the amount of the tax paid on  
5 taxable royalty oil and [OR] gas, or may deduct taxable royalty oil or gas equivalent  
6 in value at the time the tax becomes due to the amount of the tax paid. Unless  
7 otherwise agreed between the producer and the royalty owner, the amount of the  
8 tax paid under AS 43.55.011(e) and (g) on taxable royalty oil and gas for a month,  
9 other than oil and gas the ownership or right to which constitutes a landowner's  
10 royalty interest, is considered to be the gross value at the point of production of  
11 the taxable royalty oil and gas produced during the month multiplied by a figure  
12 that is a quotient, in which

13 (1) the numerator is the producer's total tax liability under  
14 AS 43.55.011(e) and (g) for the month of production; and

15 (2) the denominator is the total gross value at the point of  
16 production of the oil and gas taxable under AS 43.55.011(e) and (g) produced by  
17 the producer from all leases and properties in the state during the month.

18 \* Sec. 10. AS 43.55.020(e) is repealed and reenacted to read:

19 (e) Gas flared, released, or allowed to escape in excess of the amount  
20 authorized by the Alaska Oil and Gas Conservation Commission is considered, for the  
21 purpose of AS 43.55.011 - 43.55.180, as gas produced from a lease or property. Oil or  
22 gas used in the operation of a lease or property in the state in drilling for or producing  
23 oil or gas, or for repressuring, except to the extent determined by the Alaska Oil and  
24 Gas Conservation Commission to be waste, is not considered, for the purpose of  
25 AS 43.55.011 - 43.55.180, as oil or gas produced from a lease or property.

26 \* Sec. 11. AS 43.55.020(f) is amended to read:

27 (f) If oil or gas is produced but not sold, or if oil or gas is produced and  
28 sold under circumstances where the sale price does not represent the prevailing value  
29 for oil or gas of like kind, character, or quality in the field or area from which the  
30 product is produced, the department may require the tax to be paid upon the basis of  
31 the value of oil or gas of the same kind, quality, and character prevailing for that field

1        or area during the calendar month of production or sale [FOR THAT FIELD OR  
2        AREA].

3        \* Sec. 12. AS 43.55 is amended by adding a new section to read:

4                Sec. 43.55.024. Tax credits for certain losses and expenditures. (a) A  
5        producer or explorer may take a tax credit for a qualified capital expenditure as  
6        follows:

7                (1) notwithstanding that a qualified capital expenditure may be a  
8        deductible lease expenditure for purposes of calculating the production tax value of oil  
9        and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under  
10       AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025,

11                (A) a producer or explorer that incurs a qualified capital  
12        expenditure may also elect to take a tax credit against a tax due under  
13        AS 43.55.011(e) in the amount of 20 percent of that expenditure;

14                (B) for a calendar year for which the producer makes an  
15        election under AS 43.55.160(f), instead of taking a tax credit at a rate  
16        authorized by (A) of this paragraph as to each separate qualified capital  
17        expenditure after it has been incurred, a producer that incurs a qualified capital  
18        expenditure during that year and that wishes to apply a credit based on that  
19        expenditure against a tax due under AS 43.55.011(c) shall calculate and apply  
20        every month an annualized tax credit in an amount equal to 1 2/3 percent of the  
21        total qualified capital expenditures incurred during that year and for which the  
22        tax credit is taken for that year;

23                (2) a producer or explorer may take a credit for a qualified capital  
24        expenditure incurred in connection with geological or geophysical exploration or in  
25        connection with an exploration well only if the producer or explorer provides to the  
26        department, as part of the statement required under AS 43.55.030(a) for the month for  
27        which the credit is sought to be taken, the producer's or explorer's written agreement

28                (A) to notify the Department of Natural Resources, within 30  
29        days after completion of the geological or geophysical data processing or  
30        completion of the well, or within 30 days after the statement is filed, whichever  
31        is the latest, of the date of completion and to submit a report to that department

1 describing the processing sequence and provide a list of data sets available;

2 (B) to provide to the Department of Natural Resources, within  
3 30 days after the date of a request, specific data sets, ancillary data, and reports  
4 identified in (A) of this paragraph;

5 (C) that, notwithstanding any provision of AS 38, the  
6 Department of Natural Resources shall hold confidential the information  
7 provided to that department under this paragraph for 10 years following the  
8 completion date, after which the department shall publicly release the  
9 information after 30 days' public notice.

10 (b) A producer or explorer may elect to take a tax credit in the amount of 22.5  
11 percent of a carried-forward annual loss. A credit under this subsection may be applied  
12 against a tax due under AS 43.55.011(e) and may be applied irrespective of whether  
13 the producer or explorer also claims a credit for transitional investment expenditures  
14 authorized by (j) of this section. For purposes of this subsection, a carried-forward  
15 annual loss is the amount of a producer's or explorer's adjusted lease expenditures  
16 under AS 43.55.160 for a previous calendar year that was not deductible in any month  
17 under AS 43.55.160(a) and (b).

18 (c) A credit or portion of a credit under this section may not be used to reduce  
19 a person's tax liability under AS 43.55.011(e) for any month below zero, and any  
20 unused credit or portion of a credit not used under this subsection may be applied in a  
21 later month.

22 (d) Except as limited by (j) of this section, a person entitled to take a tax credit  
23 under this section that wishes to transfer the unused credit to another person may  
24 apply to the department for a transferable tax credit certificate. An application under  
25 this subsection must be on a form prescribed by the department and must include  
26 supporting information and documentation that the department reasonably requires.  
27 The department shall grant or deny an application, or grant an application as to a lesser  
28 amount than that claimed and deny it as to the excess, not later than 60 days after the  
29 latest of (1) March 31 of the year following the calendar year in which the qualified  
30 capital expenditure or carried-forward annual loss for which the credit is claimed was  
31 incurred; (2) if the applicant is required under AS 43.55.030(a) and (e) to file a

1 statement on or before March 31 of the year following the calendar year in which the  
2 qualified capital expenditures or carried-forward annual loss for which the credit is  
3 claimed was incurred, the date the statement was filed; or (3) the date the application  
4 was received by the department. If, based on the information then available to it, the  
5 department is reasonably satisfied that the applicant is entitled to a credit, the  
6 department shall issue the applicant a transferable tax credit certificate for the amount  
7 of the credit. A certificate issued under this subsection does not expire.

8 (e) A person to which a transferable tax credit certificate is issued under (d) of  
9 this section may transfer the certificate to another person, and a transferee may further  
10 transfer the certificate. Subject to the limitations set out in (a) - (c) of this section, and  
11 notwithstanding any action the department may take with respect to the applicant  
12 under (g) of this section, the owner of a certificate may apply the credit or a portion of  
13 the credit shown on the certificate only against a tax due under AS 43.55.011(e).  
14 However, a credit shown on a transferable tax credit certificate may not be applied to  
15 reduce a transferee's total tax due under AS 43.55.011(e) on oil and gas produced  
16 during a calendar year to less than 80 percent of the tax that would otherwise be due  
17 without applying that credit. Any portion of a credit not used under this subsection  
18 may be applied in a later period.

19 (f) Under standards established in regulations adopted by the department and  
20 subject to appropriations made by law, the department, on the written application of  
21 the person to whom a transferable tax credit has been issued under (d) of this section  
22 and whose average amount of oil and gas produced a day taxable under  
23 AS 43.55.011(e) is not more than 50,000 barrels of oil equivalent a day for the  
24 preceding calendar year, shall issue a cash refund, in whole or in part, for the  
25 certificate if the department finds

26 (1) after investigation and audit of the tax credit claim by the  
27 department, that the applicant is entitled to the credit to the extent of the refund  
28 amount;

29 (2) within 24 months after having applied for the transferable tax credit  
30 certificate, that the applicant incurred a qualified capital expenditure or was the  
31 successful bidder on a bid submitted for a lease on state land under AS 38.05.180(f);

1 (3) that the amount of the refund would not exceed the total of  
2 qualified capital expenditures and successful bids described in (2) of this subsection  
3 that have not been the subject of a finding made under this paragraph for purposes of a  
4 previous refund;

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

7 (5) that the sum of the amount of the refund applied for and amounts  
8 previously refunded to the applicant during the calendar year under this subsection  
9 would not exceed \$25,000,000.

10 (g) The issuance of a transferable tax credit certificate under (d) of this section  
11 does not limit the department's ability to later audit a tax credit claim to which the  
12 certificate relates or to adjust the claim if the department determines that the applicant  
13 was not entitled to the amount of the credit for which the certificate was issued. The  
14 tax liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is  
15 increased by the amount of the credit that exceeds that to which the applicant was  
16 entitled, or the applicant's available valid outstanding credits applicable against the tax  
17 levied by AS 43.55.011(e) are reduced by that amount. If the applicant's tax liability is  
18 increased under this subsection, the increase bears interest under AS 43.05.225 from  
19 the date the transferable tax credit certificate was issued. For purposes of this  
20 subsection, an applicant that is an explorer is considered a producer subject to the tax  
21 levied by AS 43.55.011(e).

22 (h) The department may adopt regulations to carry out the purposes of this  
23 section, including prescribing reporting, record keeping, and certification procedures  
24 and requirements to verify the accuracy of credits claimed and to ensure that a credit is  
25 not used more than once, and otherwise implementing this section.

26 (i) A person may not elect to take a tax credit under (a) or (j) of this section for  
27 an expenditure incurred to acquire an asset (1) the cost of previously acquiring which  
28 was a lease expenditure under AS 43.55.160(c) or would have been a lease  
29 expenditure under AS 43.55.160(c) if it had been incurred on or after April 1, 2006; or  
30 (2) that has previously been placed in service in the state. An expenditure to acquire an  
31 asset is not excluded under this subsection if not more than an immaterial portion of

1 the asset meets a description under (1) or (2) of this subsection. For purposes of this  
2 subsection, "asset" includes geological, geophysical, and well data and interpretations.

3 (j) For the purposes of this section,

4 (1) a producer's or explorer's transitional investment expenditures are  
5 the sum of the expenditures the producer or explorer incurred on or after April 1,  
6 2001, and before April 1, 2006, that would be qualified capital expenditures if they  
7 were incurred on or after April 1, 2006, less the sum of the payments or credits the  
8 producer or explorer received before April 1, 2006, for the sale or other transfer of  
9 assets, including geological, geophysical, or well data or interpretations, acquired by  
10 the producer or explorer as a result of expenditures the producer or explorer incurred  
11 before April 1, 2006, that would be qualified capital expenditures, if they were  
12 incurred on or after April 1, 2006;

13 (2) a producer or explorer may elect to take a tax credit against a tax  
14 due under AS 43.55.011(e) in the amount of 20 percent of the producer's or explorer's  
15 transitional investment expenditures, but only to the extent that the amount does not  
16 exceed

17 (A) one-half of the producer's or explorer's qualified capital  
18 expenditures that are incurred during the month for which the credit is taken, if  
19 the producer or explorer does not make an election under AS 43.55.160(f);

20 (B) 1/24 of the producer's or explorer's qualified capital  
21 expenditures that are incurred during the calendar year that includes the month  
22 for which the credit is taken, if the producer or explorer makes an election  
23 under AS 43.55.160(f);

24 (3) a producer or explorer may not take a tax credit for a transitional  
25 investment expenditure

26 (A) for any month that ends the later of

27 (i) April 30, 2013; or

28 (ii) the seventh anniversary of the last day of the month  
29 for which the producer first applies a credit under this subsection  
30 against a tax due under AS 43.55.011(e), if the producer did not have  
31 commercial production of oil or gas from a lease or property in the state

1 before April 1, 2006;

2 (B) more than once; or

3 (C) if a credit for that expenditure was taken under  
4 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025:

5 (4) notwithstanding (d), (e), and (g) of this section, a producer or  
6 explorer may not transfer a tax credit or obtain a transferable tax credit certificate for a  
7 transitional investment expenditure.

8 (k) As a condition of receiving a tax credit under this section, a producer or  
9 explorer that obtains the tax credit for or directly related to a pipeline, facility, or other  
10 asset that is or becomes subject to regulation by the Federal Energy Regulatory  
11 Commission or the Regulatory Commission of Alaska, or a successor regulatory body  
12 shall at all times support and in all rate proceedings file to flow through 100 percent of  
13 the tax credits to ratepayers as a reduction in the costs of service for the pipeline,  
14 facility, or other asset.

15 (l) In this section,

16 (1) "barrel of oil equivalent" means one barrel, in the case of oil, or  
17 6,000 cubic feet, in the case of gas;

18 (2) "qualified capital expenditure" means, except as otherwise  
19 provided in (i) of this section, an expenditure that is a lease expenditure under  
20 AS 43.55.160 and is

21 (A) incurred for geological or geophysical exploration; or

22 (B) treated as a capitalized expenditure under 26 U.S.C.  
23 (Internal Revenue Code), as amended, regardless of elections made under 26  
24 U.S.C. 263(c) (Internal Revenue Code), as amended, and is

25 (i) treated as a capitalized expenditure for federal  
26 income tax reporting purposes by the person incurring the expenditure;  
27 or

28 (ii) eligible to be deducted as an expense under 26  
29 U.S.C. 263(c) (Internal Revenue Code), as amended.

30 \* Sec. 13. AS 43.55.025(a) is amended to read:

31 (a) Subject to the terms and conditions of this section, [ON OIL AND GAS

1 PRODUCED ON OR AFTER JULY 1, 2004, FROM AN OIL AND GAS LEASE,  
2 OR ON GAS PRODUCED FROM A GAS ONLY LEASE,] a credit against the  
3 production tax due under AS 43.55.011(e) [THIS CHAPTER] is allowed for  
4 exploration expenditures that qualify under (b) of this section in an amount equal to  
5 one of the following:

6 (1) 20 percent of the total exploration expenditures that qualify only  
7 under (b) and (c) of this section;

8 (2) 20 percent of the total exploration expenditures for work performed  
9 before July 1, 2007, and that qualify only under (b) and (d) of this section;

10 (3) 40 percent of the total exploration expenditures that qualify under  
11 (b), (c), and (d) of this section; or

12 (4) 40 percent of the total exploration expenditures that qualify only  
13 under (b) and (e) of this section.

14 \* Sec. 14. AS 43.55.025(b) is amended to read:

15 (b) To qualify for the production tax credit under (a) of this section, an  
16 exploration expenditure must be incurred for work performed on or after July 1, 2003,  
17 and before July 1, 2016 [2007], except that an exploration expenditure for a Cook Inlet  
18 prospect must be incurred for work performed on or after July 1, 2005, [AND  
19 BEFORE JULY 1, 2010, AND EXCEPT THAT AN EXPLORATION  
20 EXPENDITURE, IN WHOLE OR IN PART, SOUTH OF 68 DEGREES, 15  
21 MINUTES, NORTH LATITUDE, AND NOT PART OF A COOK INLET  
22 PROSPECT MUST BE INCURRED FOR WORK PERFORMED ON OR AFTER  
23 JULY 1, 2003, AND BEFORE JULY 1, 2010.] and

24 (1) may be for seismic or geophysical exploration costs not connected  
25 with a specific well;

26 (2) if for an exploration well,

27 (A) must be incurred by an explorer that holds an interest in the  
28 exploration well for which the production tax credit is claimed;

29 (B) may be for either an oil or gas discovery well or a dry hole;

30 and

31 (C) must be for goods, services, or rentals of personal property

1 reasonably required for the surface preparation, drilling, casing, cementing,  
2 and logging of an exploration well, and, in the case of a dry hole, for the  
3 expenses required for abandonment if the well is abandoned within 18 months  
4 after the date the well was spudded;

5 (3) may not be for testing, stimulation, or completion costs;  
6 administration, supervision, engineering, or lease operating costs; geological or  
7 management costs; community relations or environmental costs; bonuses, taxes, or  
8 other payments to governments related to the well; or other costs that are generally  
9 recognized as indirect costs or financing costs; and

10 (4) may not be incurred for an exploration well or seismic exploration  
11 that is included in a plan of exploration or a plan of development for any unit on  
12 May 13, 2003.

13 \* Sec. 15. AS 43.55.025(f) is amended to read:

14 (f) For a production tax credit under this section,

15 (1) an explorer shall, in a form prescribed by the department and  
16 within six months of the completion of the exploration activity, claim the credit and  
17 submit information sufficient to demonstrate to the department's satisfaction that the  
18 claimed exploration expenditures qualify under this section;

19 (2) an explorer shall agree, in writing,

20 (A) to notify the Department of Natural Resources, within 30  
21 days after completion of seismic or geophysical data processing, completion of  
22 a well, or filing of a claim for credit, whichever is the latest, for which  
23 exploration costs are claimed, of the date of completion and submit a report to  
24 that department describing the processing sequence and providing a list of data  
25 sets available; if, under (c)(2)(B) of this section, an explorer submits a claim  
26 for a credit for expenditures for an exploration well that is located within three  
27 miles of a well already drilled for oil and gas, in addition to the submissions  
28 required under (1) of this subsection, the explorer shall submit the information  
29 necessary for the commissioner of natural resources to evaluate the validity of  
30 the explorer's claim that the well is directed at a distinctly separate exploration  
31 target, and the commissioner of natural resources shall, upon receipt of all

1 evidence sufficient for the commissioner to evaluate the explorer's claim, make  
2 that determination within 60 days;

3 (B) to provide to the Department of Natural Resources, within  
4 30 days after the date of a request, specific data sets, ancillary data, and reports  
5 identified in (A) of this paragraph;

6 (C) that, notwithstanding any provision of AS 38, information  
7 provided under this paragraph will be held confidential by the Department of  
8 Natural Resources for 10 years following the completion date, at which time  
9 that department will release the information after 30 days' public notice;

10 (3) if more than one explorer holds an interest in a well or seismic  
11 exploration, each explorer may claim an amount of credit that is proportional to the  
12 explorer's cost incurred;

13 (4) the department may exercise the full extent of its powers as though  
14 the explorer were a taxpayer under this title, in order to verify that the claimed  
15 expenditures are qualified exploration expenditures under this section; and

16 (5) if the department is satisfied that the explorer's claimed  
17 expenditures are qualified under this section, the department shall issue to the explorer  
18 a production tax credit certificate for the amount of credit to be allowed against  
19 production taxes due under AS 43.55.011(e) [THIS CHAPTER; HOWEVER,  
20 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE  
21 DEPARTMENT MAY NOT ISSUE TO AN EXPLORER A PRODUCTION TAX  
22 CREDIT CERTIFICATE IF THE TOTAL OF PRODUCTION TAX CREDITS  
23 SUBMITTED FOR COOK INLET PRODUCTION, BASED ON EXPLORATION  
24 EXPENDITURES FOR WORK PERFORMED DURING THE PERIOD  
25 DESCRIBED IN (b) OF THIS SECTION FOR THAT PRODUCTION, THAT HAVE  
26 BEEN APPROVED BY THE DEPARTMENT EXCEEDS \$20,000,000].

27 \* Sec. 16. AS 43.55.025(h) is amended to read:

28 (h) A producer that purchases a production tax credit certificate may apply the  
29 credits against its production tax liability under AS 43.55.011(e) [THIS CHAPTER].  
30 Regardless of the price the producer paid for the certificate, the producer may receive  
31 a credit against its production tax liability for the full amount of the credit, but for not

1 more than the amount for which the certificate is issued. A production tax credit  
2 allowed under this section may not be applied more than once.

3 \* Sec. 17. AS 43.55.025(i) is amended to read:

4 (i) For a production tax credit under this section,

5 (1) the amount of the credit that may be applied against the production  
6 tax for each tax month may not exceed the total production tax liability under  
7 AS 43.55.011(e) of the taxpayer applying the credit for the same month; and

8 (2) an amount of the production tax credit that is greater than the total  
9 tax liability under AS 43.55.011(e) of the taxpayer applying the credit for a tax month  
10 may be carried forward and applied against the taxpayer's production tax liability  
11 under AS 43.55.011(e) in one or more immediately following months.

12 \* Sec. 18. AS 43.55.030(a) is amended to read:

13 (a) The tax shall be paid to the department, and the person paying the tax shall  
14 file with the department at the time the tax or a portion of the tax is required to be  
15 paid a statement, under oath, on forms prescribed by or acceptable to the department,  
16 giving, with other information required, the following:

17 (1) a description of each [THE] lease or property from which the oil  
18 and [OR] gas were [WAS] produced, by name, legal description, lease number, or  
19 [BY] accounting codes [CODE NUMBERS] assigned by the department;

20 (2) the names of the producer and the person paying the tax;

21 (3) the gross amount of oil and the gross amount of [OR] gas  
22 produced from each [THE] lease or property, and the percentage of the gross amount  
23 of oil and gas owned by each producer for whom the tax is paid;

24 (4) the gross [TOTAL] value at the point of production of the oil  
25 and of the [OR] gas produced from each [THE] lease or property owned by each  
26 producer for whom the tax is paid; [AND]

27 (5) the name of the first purchaser and the price received for the oil  
28 and for the [OR] gas, unless relieved from this requirement in whole or in part by  
29 the department; and

30 (6) the producer's lease expenditures and adjustments as  
31 calculated under AS 43.55.160 [IF SOLD IN THE STATE].

1 \* Sec. 19. AS 43.55.030(d) is amended to read:

2 (d) Reports by or on behalf of the producer are delinquent the first day  
3 following the day the tax is due. [EACH PRODUCER IS SUBJECT TO A PENALTY  
4 OF \$25 A DAY FOR EACH LEASE OR PROPERTY UPON WHICH THE  
5 REPORT IS NOT FILED. THE PENALTY FOR FAILURE TO FILE A REPORT IS  
6 IN ADDITION TO THE PENALTY FOR DELINQUENT TAXES, AND IS A LIEN  
7 AGAINST THE ASSETS OF THE PRODUCER.]

8 \* Sec. 20. AS 43.55.030 is amended by adding a new subsection to read:

9 (e) In addition to other required information, the statement required to be filed  
10 on or before March 31 of a year must show any adjustments or corrections to the  
11 statements that were required under (a) of this section to be filed for the months of the  
12 preceding calendar year during which the oil or gas was produced.

13 \* Sec. 21. AS 43.55.040 is amended to read:

14 Sec. 43.55.040. Powers of Department of Revenue. Except as provided in  
15 AS 43.05.405 - 43.05.499, the department may

16 (1) require a person engaged in production and the agent or employee  
17 of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil  
18 or gas to furnish, whether by the filing of regular statements or reports or  
19 otherwise, additional information that is considered by the department as necessary to  
20 compute the amount of the tax; notwithstanding any contrary provision of law, the  
21 disclosure of additional information under this paragraph to the producer  
22 obligated to pay the tax does not violate AS 40.25.100(a) or AS 43.05.230(a);  
23 before disclosing information under this paragraph that is otherwise required to  
24 be held confidential under AS 40.25.100(a) or AS 43.05.230(a), the department  
25 shall

26 (A) provide the person that furnished the information a  
27 reasonable opportunity to be heard regarding the proposed disclosure and  
28 the conditions to be imposed under (B) of this paragraph; and

29 (B) impose appropriate conditions limiting

30 (i) access to the information to those legal counsel,  
31 consultants, employees, officers, and agents of the producer who

1 have a need to know that information for the purpose of  
 2 determining or contesting the producer's tax obligation; and

3 (ii) the use of the information to use for that  
 4 purpose;

5 (2) examine the books, records, and files of such a person;

6 (3) conduct hearings and compel the attendance of witnesses and the  
 7 production of books, records, and papers of any person; and

8 (4) make an investigation or hold an inquiry that is considered  
 9 necessary to a disclosure of the facts as to

10 (A) the amount of production from any oil or gas location, or of  
 11 a company or other producer of oil or gas; and

12 (B) the rendition of the oil and gas for taxing purposes.

13 \* Sec. 22. AS 43.55.080 is amended to read:

14 Sec. 43.55.080. Collection and deposit of revenue. Except as otherwise  
 15 provided under art. IX, sec. 17, Constitution of the State of Alaska, the [THE]  
 16 department shall deposit in the general fund the money collected by it under  
 17 AS 43.55.011 - 43.55.180 [AS 43.55.011 - 43.55.150].

18 \* Sec. 23. AS 43.55.135 is amended to read:

19 Sec. 43.55.135. Measurement. For the purposes of AS 43.55.011 - 43.55.180  
 20 [AS 43.55.011 - 43.55.150], oil is [SHALL BE] measured in terms of a "barrel of oil"  
 21 and gas is [SHALL BE] measured in terms of a "cubic foot of gas."

22 \* Sec. 24. AS 43.55.150(a) is amended to read:

23 (a) For the purposes of AS 43.55.011 - 43.55.180 [AS 43.55.011 - 43.55.150],  
 24 the gross value at the point of production is [SHALL BE] calculated using the  
 25 reasonable costs of transportation of the oil or gas. The reasonable costs of  
 26 transportation are [SHALL BE] the actual costs, except when the

27 (1) [WHEN THE] parties to the transportation of oil or gas are  
 28 affiliated;

29 (2) [WHEN THE] contract for the transportation of oil or gas is not an  
 30 arm's length transaction or is not representative of the market value of that  
 31 transportation; and

1 (3) [WHEN THE] method of transportation of oil or gas is not  
2 reasonable in view of existing alternative methods of transportation.

3 \* Sec. 25. AS 43.55 is amended by adding new sections to article 1 to read:

4 **Sec. 43.55.160. Determination of production tax value of oil and gas. (a)**

5 Except as provided in (f) of this section, for purposes of AS 43.55.011(e) and (g), the  
6 production tax value of the taxable oil and gas produced during a month, other than  
7 gas produced from leases or properties in the Cook Inlet sedimentary basin, is (1) the  
8 total of (A) the gross value at the point of production of the oil taxable under  
9 AS 43.55.011(e) and (g) and produced by the producer from all leases or properties in  
10 the state, less three-quarters of the gross value at the point of production of the oil  
11 taxable under AS 43.55.011(e) and (g) and produced by the producer from leases or  
12 properties in the Cook Inlet sedimentary basin, and (B) two-thirds of the gross value at  
13 the point of production of the gas taxable under AS 43.55.011(e) and (g) and produced  
14 by the producer from all leases or properties in the state outside the Cook Inlet  
15 sedimentary basin, less one-sixth of the gross value at the point of production of the  
16 gas taxable under AS 43.55.011(e) and (g) and produced by the producer from all  
17 leases or properties in the state located south of 68 degrees 15 minutes North latitude  
18 outside the Cook Inlet sedimentary basin, (2) less the producer's lease expenditures for  
19 the month as adjusted under (e) of this section, other than lease expenditures  
20 applicable to gas produced from leases or properties in the Cook Inlet sedimentary  
21 basin. Except as provided in (f) of this section, for purposes of AS 43.55.011(e) and  
22 (g), the production tax value of the taxable gas produced during a month from leases  
23 or properties in the Cook Inlet sedimentary basin is one-third of the gross value at the  
24 point of production of the gas taxable under AS 43.55.011(e) and (g) and produced by  
25 the producer from those leases or properties, less the producer's lease expenditures for  
26 the month applicable to gas produced from leases or properties in the Cook Inlet  
27 sedimentary basin, as adjusted under (e) of this section. However, a production tax  
28 value calculated under this subsection may not be less than zero. If a producer does  
29 not produce taxable oil or gas during a month, the producer is considered to have  
30 generated a positive production tax value if a calculation described in this subsection  
31 yields a positive number because the producer's adjusted lease expenditures for a

1 month are less than zero as a result of the producer's receiving a payment or credit  
2 under (e) of this section or otherwise.

3 (b) For purposes of administration of (a) of this section,

4 (1) any adjusted lease expenditures that would otherwise be deductible  
5 in a month but whose deduction would cause a production tax value calculated under  
6 (a) of this section of taxable oil or gas produced during the month to be less than zero  
7 may be added to the producer's adjusted lease expenditures for one or more other  
8 months in the same calendar year; the total of any adjusted lease expenditures that are  
9 not deductible in any month during a calendar year because their deduction would  
10 cause a production tax value calculated under (a) of this section of taxable oil or gas  
11 produced during one or more months to be less than zero may be used to establish a  
12 carried-forward annual loss under AS 43.55.024(b);

13 (2) an explorer that has taken a tax credit under AS 43.55.024(b) or  
14 that has obtained a transferable tax credit certificate under AS 43.55.024(d) for the  
15 amount of a tax credit under AS 43.55.024(b) is considered a producer, subject to the  
16 tax levied under AS 43.55.011(e), to the extent that the explorer generates a positive  
17 production tax value as the result of the explorer's receiving a payment or credit  
18 described in (e) of this section.

19 (c) For purposes of this section,

20 (1) a producer's lease expenditures for a period are the costs upstream  
21 of the point of production of oil and gas that are incurred on or after April 1, 2006, by  
22 the producer during the period and that are direct, ordinary, and necessary costs of  
23 exploring for, developing, or producing oil or gas deposits located within the  
24 producer's leases or properties in the state or, in the case of land in which the producer  
25 does not own a working interest, direct, ordinary, and necessary costs of exploring for  
26 oil or gas deposits located within other land in the state; in determining whether costs  
27 are direct, ordinary, and necessary costs of exploring for, developing, or producing oil  
28 or gas deposits located within a lease or property or other land in the state,

29 (A) the department shall give substantial weight to the typical  
30 industry practices and standards in the state that determine the costs that an  
31 operator is allowed to bill a working interest owner that is not the operator.

1 under unit operating agreements or similar operating agreements that were in  
2 effect on or before December 1, 2005, and were subject to negotiation with at  
3 least one working interest owner with substantial bargaining power, other than  
4 the operator; and

5 (B) as to matters that are not addressed by the industry  
6 practices and standards described in (A) of this paragraph or as to which those  
7 practices and standards are not clear or are not uniform, the department shall  
8 give substantial weight to the standards adopted by the Department of Natural  
9 Resources that determine the costs, other than interest, that a lessee is allowed  
10 to deduct from revenue in calculating net profits under a lease issued under  
11 AS 38.05.180(f)(3)(B), (D), or (E);

12 (2) the Department of Revenue may authorize a producer, including a  
13 producer that is an operator, to treat as its lease expenditures under this section the  
14 costs paid by the producer that are billed to the producer by an operator in accordance  
15 with the terms of a unit operating agreement or similar operating agreement if the  
16 Department of Revenue finds that

17 (A) the pertinent provisions of the operating agreement are  
18 substantially consistent with the Department of Revenue's determinations and  
19 standards otherwise applicable under this subsection; and

20 (B) at least one working interest owner party to the agreement,  
21 other than the operator, has substantial incentive and ability to effectively audit  
22 billings under the agreement;

23 (3) an activity does not need to be physically located on, near, or  
24 within the premises of the lease or property within which an oil or gas deposit being  
25 explored for, developed, or produced is located in order for the cost of the activity to  
26 be a cost upstream of the point of production of the oil or gas;

27 (4) the lease expenditures that are applicable to gas produced from  
28 leases or properties in the Cook Inlet sedimentary basin and the lease expenditures that  
29 are applicable to oil and other gas shall be determined under regulations adopted by  
30 the department that provide for reasonable methods of allocating costs between oil and  
31 gas and between the Cook Inlet sedimentary basin and the rest of the state;

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(5) "direct costs" include

(A) an expenditure, when incurred, to acquire an item if the acquisition cost is otherwise a direct cost, notwithstanding that the expenditure may be required to be capitalized rather than treated as an expense for financial accounting or federal income tax purposes;

(B) payments of or in lieu of property taxes, sales and use taxes, motor fuel taxes, and excise taxes;

(C) a reasonable allowance, as determined under regulations adopted by the department, for overhead expenses directly related to exploring for, developing, and producing oil or gas deposits located within leases or properties or other land in the state.

(d) For purposes of (c) of this section, lease expenditures do not include

(1) depreciation, depletion, or amortization;

(2) oil or gas royalty payments, production payments, lease profit shares, or other payments or distributions of a share of oil or gas production, profit, or revenue;

(3) taxes based on or measured by net income;

(4) interest or other financing charges or costs of raising equity or debt capital;

(5) acquisition costs for a lease or property or exploration license;

(6) costs arising from fraud, wilful misconduct, or gross negligence;

(7) fines or penalties imposed by law;

(8) costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among owners of interests in, or rights to production from, one or more leases or properties or a unit;

(9) donations;

(10) costs incurred in organizing a partnership, joint venture, or other business entity or arrangement;

(11) amounts paid to indemnify the state; the exclusion provided by this paragraph does not apply to the costs of obtaining insurance or a surety bond from a third-party insurer or surety;

1 (12) surcharges levied under AS 43.55.201 or 43.55.300;

2 (13) for a transaction that is an internal transfer or is otherwise not an  
3 arm's length transaction, expenditures incurred that are in excess of fair market value;

4 (14) an expenditure incurred to purchase an interest in any corporation,  
5 partnership, limited liability company, business trust, or any other business entity,  
6 whether or not the transaction is treated as an asset sale for federal income tax  
7 purposes;

8 (15) a tax levied under AS 43.55.011;

9 (16) the portion of costs incurred for dismantlement, removal,  
10 surrender, or abandonment of a facility, pipeline, well pad, platform, or other  
11 structure, or for the restoration of a lease, field, unit, area, body of water, or right-of-  
12 way in conjunction with dismantlement, removal, surrender, or abandonment, that is  
13 attributable to production of oil or gas occurring before April 1, 2006; the portion is  
14 calculated as a ratio of the amount of oil and gas production associated with the  
15 facility, pipeline, well pad, platform, or other structure, lease, field, unit, area, body of  
16 water, or right-of-way occurring before April 1, 2006, to the total amount of oil and  
17 gas production associated with that facility, pipeline, well pad, platform, or other  
18 structure, lease, field, unit, area, body of water, or right-of-way through the end of the  
19 calendar month before commencement of the dismantlement, removal, surrender, or  
20 abandonment; for purposes of the ratio calculated under this paragraph, 6,000 cubic  
21 feet of gas is considered to be equivalent to one barrel of oil; a cost is not excluded  
22 under this paragraph if the dismantlement, removal, surrender, or abandonment for  
23 which the cost is incurred is undertaken for the purpose of replacing, renovating, or  
24 improving the facility, pipeline, well pad, platform, or other structure;

25 (17) losses or damages resulting from an unpermitted oil discharge that  
26 is not confined to a gravel pad, or costs to contain, clean up, or remediate such an  
27 unpermitted oil discharge to the extent that those costs exceed the routine costs of  
28 operation for a producer or explorer that would otherwise be incurred as lease  
29 expenditures in the absence of the unpermitted oil discharge; this paragraph does not  
30 apply to the cost of developing and maintaining an oil discharge prevention and  
31 contingency plan under AS 46.04.030;

1 (18) costs incurred to satisfy a work commitment under an exploration  
2 license under AS 38.05.132.

3 (e) Unless the payment or credit has already been subtracted in calculating  
4 billed costs under (c)(2) of this section, a producer's lease expenditures must be  
5 adjusted by subtracting certain payments or credits received by the producer or by an  
6 operator acting for the producer, as provided in this subsection. If one or more  
7 payments or credits subject to this subsection are received by a producer or by an  
8 operator acting for the producer during a month or, under (f) of this section, during a  
9 calendar year, and if either the total amount of the payments or credits exceeds the  
10 amount of the producer's lease expenditures or the producer has no lease expenditures,  
11 the producer shall nevertheless subtract those payments or credits from the lease  
12 expenditures or from zero, respectively, and the producer's adjusted lease expenditures  
13 for that month or calendar year are a negative number and shall be applied to the  
14 calculation under (a) of this section as a negative number. The payments or credits that  
15 a producer shall subtract from the producer's lease expenditures, or from zero, under  
16 this subsection are payments or credits, other than tax credits, received by the producer  
17 or by an operator acting for the producer for

18 (1) the use by another person of a production facility in which the  
19 producer has an ownership interest or the management by the producer of a production  
20 facility under a management agreement providing for the producer to receive a  
21 management fee;

22 (2) a reimbursement or similar payment that offsets the producer's  
23 lease expenditures, including an insurance recovery from a third-party insurer and a  
24 payment from the state or federal government for reimbursement of the producer's  
25 upstream costs, including costs for gathering, separating, cleaning, dehydration,  
26 compressing, or other field handling associated with the production of oil or gas  
27 upstream of the point of production;

28 (3) the sale or other transfer of

29 (A) an asset, including geological, geophysical, or well data or  
30 interpretations, acquired by the producer as a result of a lease expenditure or an  
31 expenditure that would be a lease expenditure if it were incurred on or after

1 April 1, 2006; for purposes of this subparagraph,

2 (i) if a producer removes from the state, for use outside  
3 the state, an asset described in this subparagraph, the value of the asset  
4 at the time it is removed is considered a payment received by the  
5 producer for sale or transfer of the asset;

6 (ii) for a transaction that is an internal transfer or is  
7 otherwise not an arm's length transaction, if the sale or transfer of the  
8 asset is made for less than fair market value, the amount subtracted  
9 must be the fair market value; and

10 (B) oil or gas

11 (i) that is not considered produced from a lease or  
12 property under AS 43.55.020(e); and

13 (ii) the cost of acquiring which is a lease expenditure  
14 incurred by the person that acquires the oil or gas.

15 (f) In place of the adjusted lease expenditures for a month under (a) of this  
16 section, a producer may, at any time, elect to substitute, for every month of a calendar  
17 year, 1/12 of the producer's adjusted lease expenditures for the calendar year.

18 (g) The department shall specify or approve a reasonable allocation method  
19 for determining the portion of a cost that is appropriately treated as a lease expenditure  
20 under (c) of this section if a cost that would otherwise constitute a lease expenditure  
21 under (c) of this section is incurred to explore for, develop, or produce

22 (1) both an oil or gas deposit located within land outside the state and  
23 an oil or gas deposit located within a lease or property, or other land, in the state; or

24 (2) an oil or gas deposit located partly within land outside the state and  
25 partly within a lease or property, or other land, in the state.

26 (h) For purposes of AS 43.55.024(a) and (b) and only as to expenditures  
27 incurred to explore for an oil or gas deposit located within land in which an explorer  
28 does not own a working interest, the term "producer" in (b), (c), and (e) of this section  
29 includes "explorer."

30 (i) The department may adopt regulations that establish additional standards  
31 necessary to carrying out the purposes of this section, including the incorporation of

1 the concepts of 26 U.S.C. 482 (Internal Revenue Code), as amended, the related or  
2 accompanying regulations of that section, and any ruling or guidance issued by the  
3 United States Internal Revenue Service that relates to that section.

4 (j) For purposes of this section,

5 (1) "explore" includes conducting geological or geophysical  
6 exploration, including drilling a stratigraphic test well;

7 (2) "ordinary and necessary" has the meaning given in 26 U.S.C. 162  
8 (Internal Revenue Code), as amended, and regulations adopted under that section;

9 (3) "stratigraphic test well" means a well drilled for the sole purpose of  
10 obtaining geological information to aid in exploring for an oil or gas deposit and the  
11 target zones of which are located in the state.

12 **Sec. 43.55.170. Additional nontransferable tax credit.** (a) For a month for  
13 which a producer's tax liability under AS 43.55.011(e) exceeds zero before application  
14 of any credits under this chapter, a producer that is qualified under (c) of this section  
15 may apply a tax credit under this section of up to \$1,000,000 against that liability.

16 (b) A producer may not take a tax credit under this section for any month that  
17 ends the later of

18 (1) March 31, 2016; or

19 (2) the 10th anniversary of the last day of the month for which the  
20 producer first has commercial oil or gas production from at least one lease or property  
21 in the state, if the producer did not have commercial oil or gas production from a lease  
22 or property in the state before April 1, 2006.

23 (c) On written application by a producer, including any information the  
24 department may require, the department shall determine whether the producer  
25 qualifies under this section for a calendar year. To qualify under this section, a  
26 producer must demonstrate that its operation in the state or its ownership of an interest  
27 in a lease or property in the state as a distinct producer entity would not result in the  
28 division among multiple producer entities of any production tax liability under  
29 AS 43.55.011(e) that would be reasonably expected to be attributed to a single  
30 producer entity if the tax credit provision of (a) of this section did not exist.

31 (d) A tax credit authorized by this section may not be applied to reduce a

1 producer's tax liability under AS 43.55.011(e) for any month below zero. An unused  
2 portion of a tax credit that could otherwise be applied for a month but whose  
3 application would cause the producer's tax liability under AS 43.55.011(e) for the  
4 month to be less than zero may be applied for one or more other months in the same  
5 calendar year to the extent otherwise allowed under this section.

6 (e) An unused tax credit or portion of a tax credit under this section is not  
7 transferable and may not be carried forward to or used in a later calendar year.

8 **Sec. 43.55.180. Required reports.** (a) The Department of Revenue shall

9 (1) study

10 (A) the effects of the tax rates under AS 43.55.011(f) and of  
11 potential changes in those tax rates on state revenue and on oil and gas  
12 exploration, development, and production on private land; and

13 (B) the fairness of the tax rates under AS 43.55.011(f) and of  
14 potential changes in those tax rates for private landowners; and

15 (2) prepare a report on or before the first day of the 2013 regular  
16 session of the legislature on the results of the study made under (1) of this subsection,  
17 including a recommendation as to whether those tax rates should be changed; the  
18 department shall notify the legislature that the report prepared under this paragraph is  
19 available.

20 (b) The Department of Revenue shall

21 (1) study the effects of the credits authorized by AS 43.55.025 and  
22 43.55.170 on state revenue, on the encouragement of exploration, development, and  
23 production of oil and gas deposits located in the state, and on the encouragement of  
24 new entrants into the oil and gas industry in the state; and

25 (2) prepare a report on or before the first day of the 2015 regular  
26 session of the legislature on the results of the study made under (1) of this subsection,  
27 and shall include with the report a recommendation as to whether the legislature  
28 should extend the availability of the credits under AS 43.55.025 and 43.55.170; the  
29 department shall notify the legislature that the report prepared under this paragraph is  
30 available.

31 \* **Sec. 26.** AS 43.55.201 is amended to read:

1           Sec. 43.55.201. Surcharge levied. (a) Every producer of oil shall pay a  
2 surcharge of \$.01 [\$.02] per barrel of oil produced from each lease or property in the  
3 state, less any oil the ownership or right to which is exempt from taxation.

4           (b) The surcharge imposed by (a) of this section is in addition to the tax  
5 imposed by AS 43.55.011 and is due on the last day of the month on oil produced  
6 from each lease or property during the preceding month. The surcharge [SHALL  
7 BE PAID IN THE SAME MANNER AS THE TAX IMPOSED BY AS 43.55.011 -  
8 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.300 -  
9 43.55.310.

10           (c) A producer of oil shall make reports of production in the same manner and  
11 under the same penalties as required under AS 43.55.011 - 43.55.180 [AS 43.55.011 -  
12 43.55.150].

13 \* Sec. 27. AS 43.55.201 is amended by adding a new subsection to read:

14           (d) Oil not considered under AS 43.55.020(e) to be produced from a lease or  
15 property is not considered to be produced from a lease or property for purposes of this  
16 section.

17 \* Sec. 28. AS 43.55.300 is amended to read:

18           Sec. 43.55.300. Surcharge levied. (a) Every producer of oil shall pay a  
19 surcharge of \$.04 [\$.03] per barrel of oil produced from each lease or property in the  
20 state, less any oil the ownership or right to which is exempt from taxation.

21           (b) The surcharge imposed by (a) of this section is in addition to the tax  
22 imposed by AS 43.55.011 and is due on the last day of the month on oil produced  
23 from each lease or property during the preceding month. The surcharge [SHALL  
24 BE PAID IN THE SAME MANNER AS THE TAX IMPOSED BY AS 43.55.011 -  
25 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.201 -  
26 43.55.231.

27           (c) A producer of oil shall make reports of production in the same manner and  
28 under the same penalties as required under AS 43.55.011 - 43.55.180 [AS 43.55.011 -  
29 43.55.150].

30 \* Sec. 29. AS 43.55.300 is amended by adding a new subsection to read:

31           (d) Oil not considered under AS 43.55.020(e) to be produced from a lease or

1 property is not considered to be produced from a lease or property for purposes of this  
2 section.

3 \* **Sec. 30.** AS 43.55 is amended by adding a new section to article 4 to read:

4 **Sec. 43.55.890. Relationship to Alaska Stranded Gas Development Act.**

5 During the period that a valid contract executed under AS 43.82, as amended, is in  
6 force, AS 43.55.011 - 43.55.310 do not apply to oil or gas for which a producer is  
7 obligated to make payments in lieu of taxes or oil surcharges. A payment in lieu of  
8 taxes includes delivery of gas to the state in lieu of taxes.

9 \* **Sec. 31.** AS 43.55.900(6) is repealed and reenacted to read:

10 (6) "gas" means

11 (A) all natural, associated, or casinghead gas;

12 (B) all hydrocarbons that

13 (i) are recovered by mechanical separation of well  
14 fluids or by gas processing in a gas processing plant; and

15 (ii) exist in a gaseous phase at the completion of  
16 mechanical separation and any gas processing in a gas processing plant;  
17 and

18 (C) all other hydrocarbons produced from a well not defined as  
19 oil;

20 \* **Sec. 32.** AS 43.55.900(7) is repealed and reenacted to read:

21 (7) "gross value at the point of production" means

22 (A) for oil, the value of the oil at its point of production  
23 without deduction of any costs upstream of that point of production;

24 (B) for gas, the value of the gas at its point of production  
25 without deduction of any costs upstream of that point of production;

26 \* **Sec. 33.** AS 43.55.900(10) is repealed and reenacted to read:

27 (10) "oil" means

28 (A) crude petroleum oil; and

29 (B) all liquid hydrocarbons that are recovered by mechanical  
30 separation of well fluids or by gas processing in a gas processing plant;

31 \* **Sec. 34.** AS 43.55.900 is amended by adding new paragraphs to read:

1 (17) "Cook Inlet sedimentary basin" has the meaning given in  
2 regulations adopted to implement AS 38.05.180(f)(4);

3 (18) "explorer" means a person who, in exploring for new oil or gas  
4 reserves, incurs expenditures;

5 (19) "gas processing"

6 (A) means processing a gaseous mixture of hydrocarbons

7 (i) by means of absorption, adsorption, externally  
8 applied refrigeration, artificial compression followed by adiabatic  
9 expansion using the Joule-Thomson effect, or another physical process  
10 that is not mechanical separation; and

11 (ii) for the purpose of extracting and recovering liquid  
12 hydrocarbons;

13 (B) does not include gas treatment;

14 (20) "gas processing plant" means a facility that

15 (A) extracts and recovers liquid hydrocarbons from a gaseous  
16 mixture of hydrocarbons by gas processing; and

17 (B) is located upstream of any gas treatment and upstream of  
18 the inlet of any gas pipeline system transporting gas to a market;

19 (21) "gas treatment"

20 (A) means conditioning gas and removing from gas  
21 nonhydrocarbon substances for the purpose of rendering the gas acceptable for  
22 tender and acceptance into a gas pipeline system;

23 (B) includes incidentally removing liquid hydrocarbons from  
24 the gas;

25 (C) does not include

26 (i) dehydration required to facilitate the movement of  
27 gas from the well to the point where gas processing takes place;

28 (ii) the scrubbing of liquids from gas to facilitate gas  
29 processing;

30 (22) "landowner's royalty interest" means

31 (A) a lessor's royalty interest under an oil and gas lease; or

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(B) a royalty interest that is

(i) held by a surface owner of land from which oil or gas is produced; and

(ii) granted in exchange for the right to use the surface of that land or as compensation for damage to the surface of that land;

(23) "oil and gas lease" includes an oil and gas lease, a gas only lease, and an oil only lease;

(24) "point of production" means

(A) for oil, the automatic custody transfer meter or device through which the oil enters into the facilities of a carrier pipeline or other transportation carrier in a condition of pipeline quality; in the absence of an automatic custody transfer meter or device, "point of production" means the mechanism or device to measure the quantity of oil that has been approved by the department for that purpose, through which the oil is tendered and accepted in a condition of pipeline quality into the facilities of a carrier pipeline or other transportation carrier or into a field topping plant;

(B) for gas, other than gas described in (C) of this paragraph, that is

(i) not subjected to or recovered by mechanical separation or run through a gas processing plant, the first point where the gas is accurately metered;

(ii) subjected to or recovered by mechanical separation but not run through a gas processing plant, the first point where the gas is accurately metered after completion of mechanical separation;

(iii) run through a gas processing plant, the first point where the gas is accurately metered downstream of the plant;

(C) for gas run through an integrated gas processing plant and gas treatment facility that does not accurately meter the gas after the gas processing and before the gas treatment, the first point where gas processing is completed or where gas treatment begins, whichever is further upstream.

\* Sec. 35. AS 43.55.011(a), 43.55.011(b), 43.55.011(c), 43.55.012, 43.55.013, 43.55.016,

1 43.55.025(k)(1), 43.55.025(k)(3), 43.55.900(1), 43.55.900(8), 43.55.900(11), 43.55.900(12),  
2 and 43.55.900(16) are repealed.

3 \* Sec. 36. The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 APPLICABILITY. (a) Sections 5, 7 - 10, 12, 13, 15 - 18, 20, 24, 26 - 29, and 31 - 35  
6 of this Act and AS 43.55.160 and 43.55.170, enacted by sec. 25 of this Act, apply to oil and  
7 gas produced after March 31, 2006.

8 (b) Section 11 of this Act applies to oil and gas produced before, on, or after the  
9 effective date of sec. 11 of this Act.

10 \* Sec. 37. The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12 TRANSITIONAL PROVISIONS. (a) Notwithstanding any contrary provision of  
13 AS 43.55.024(a), enacted by sec. 12 of this Act, for oil and gas produced after March 31,  
14 2006, and before January 1, 2007, the phrase "every month an annualized tax credit in an  
15 amount equal to 1 2/3 percent" in AS 43.55.024(a)(1)(B), enacted by sec. 12 of this Act, shall  
16 be replaced by the phrase "every month during the period April 1, 2006, through  
17 December 31, 2006, an annualized tax credit in an amount equal to 2.222 percent."

18 (b) Notwithstanding any contrary provision of AS 43.55.024(e), enacted by sec. 12 of  
19 this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007, the  
20 phrase "a calendar year" in AS 43.55.024(e), enacted by sec. 12 of this Act, shall be replaced  
21 by the phrase "the last nine months of the calendar year."

22 (c) Notwithstanding any contrary provision of AS 43.55.024(j)(2), enacted by sec. 12  
23 of this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007,

24 (1) the number "1/24" in AS 43.55.024(j)(2)(B), enacted by sec. 12 of this  
25 Act, shall be replaced by the number "1/18";

26 (2) the phrase "calendar year" in AS 43.55.024(j)(2)(B), enacted by sec. 12 of  
27 this Act, shall be replaced by the phrase "last nine months of the calendar year."

28 (d) Notwithstanding any contrary provision of AS 43.55.160(f), enacted by sec. 25 of  
29 this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007, the  
30 phrase "for every month of a calendar year, 1/12 of the producer's adjusted lease expenditures  
31 for the calendar year" in AS 43.55.160(f), enacted by sec. 25 of this Act, shall be replaced by

1 the phrase "for each of the last nine months of 2006, one-ninth of the producer's adjusted lease  
2 expenditures for that nine-month period."

3 (e) For oil and gas produced before April 1, 2006, the provisions of AS 43.55, and  
4 regulations adopted under AS 43.55, that were in effect before April 1, 2006, and that were  
5 applicable to the oil and gas continue to apply to that oil and gas.

6 (f) Notwithstanding any contrary provision of AS 43.55.020(a), as repealed and  
7 reenacted by sec. 7 of this Act, for oil and gas produced after March 31, 2006, and before the  
8 first day of the first month that begins at least 10 months after the effective date of sec. 7 of  
9 this Act,

10 (1) the amount of the taxes that would have been levied on the producer by  
11 AS 43.55, as the provisions of that chapter read on March 31, 2006, is due on the last day of  
12 each calendar month on the oil and gas that was produced from each lease or property during  
13 the preceding month;

14 (2) the portion, if any, of the taxes levied by AS 43.55.011(e) - (g), enacted by  
15 sec. 5 of this Act, that is due under AS 43.55.020(a), as repealed and reenacted by sec. 7 of  
16 this Act, and that remains unpaid, net of any credits applied as allowed by law, is due on the  
17 last day of the first month that begins at least 10 months after the effective date of sec. 5 of  
18 this Act.

19 (g) Notwithstanding any contrary provision of AS 43.55.030(a), as amended by sec.  
20 18 of this Act, for oil and gas produced after March 31, 2006, and before the first day of the  
21 first month that begins at least 10 months after the effective date of sec. 18 of this Act, the  
22 person paying the tax shall file with the Department of Revenue, at the time an amount of tax  
23 is due

24 (1) under (f)(1) of this section, the statement required under former  
25 AS 43.55.030(a), as that subsection read on March 31, 2006, and

26 (2) under (f)(2) of this section, the statements required under AS 43.55.030(a),  
27 as amended by sec. 18 of this Act.

28 (h) Notwithstanding any contrary provision of AS 43.55.201(a) or (b), as amended by  
29 sec. 26 of this Act, or AS 43.55.300(a) or (b), as amended by sec. 28 of this Act, for oil  
30 produced after March 31, 2006, and before the first day of the first month that begins at least  
31 10 months after the effective date of secs. 26 and 28 of this Act,

1 (1) the amount of the surcharges that would have been imposed on the  
2 producer under AS 43.55, as the provisions of that chapter read on March 31, 2006, is due on  
3 the last day of each calendar month on oil produced from each lease or property during the  
4 preceding month;

5 (2) the portion, if any, of the surcharges imposed under AS 43.55.201(a), as  
6 amended by sec. 26 of this Act, and AS 43.55.300(a), as amended by sec. 28 of this Act, and  
7 that remains unpaid is due on the last day of the first month that begins at least 10 months  
8 after the effective date of secs. 26 and 28 of this Act.

9 (i) Notwithstanding any contrary provision of AS 43.55.201(c), as amended by sec.  
10 26 of this Act, or AS 43.55.300(c), as amended by sec. 28 of this Act, for oil produced after  
11 March 31, 2006, and before the first day of the first month that begins at least 10 months after  
12 the effective date of secs. 26 and 28 of this Act, at the time an amount of surcharge is due

13 (1) under (h)(1) of this section, the producer shall file the report of production  
14 required under former AS 43.55.201(c) and 43.55.300(c), as those provisions read on  
15 March 31, 2006; and

16 (2) under (h)(2) of this section, the producer shall file the report of production  
17 required under AS 43.55.201(c), as amended by sec. 26 of this Act, and AS 43.55.300(c), as  
18 amended by sec. 28 of this Act.

19 (j) For purposes of taxes to be calculated and due under (f)(1) of this section and  
20 statements to be filed under (g)(1) of this section, regulations that were adopted by the  
21 Department of Revenue under AS 43.55, as the provisions of that chapter read on March 31,  
22 2006, and that were in effect on that date apply to those taxes and statements.

23 \* Sec. 38. The uncodified law of the State of Alaska is amended by adding a new section to  
24 read:

25 **TRANSITION: REGULATIONS AND RETROACTIVITY OF REGULATIONS.** (a)  
26 The Department of Revenue may proceed to adopt regulations to implement the changes  
27 made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),  
28 but not before the effective date of the law implemented by the regulation.

29 (b) Notwithstanding any contrary provision of AS 44.62.240, a regulation adopted by  
30 the Department of Revenue to implement, interpret, make specific, or otherwise carry out the  
31 provisions of secs. 5, 7 - 10, 12, 13, 15 - 18, 20, 24 - 29, 31 - 35, and 37 of this Act may apply

1 retroactively as of April 1, 2006, if the Department of Revenue expressly designates in the  
2 regulation that the regulation applies retroactively to that date.

3 \* **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the  
6 heading of

7 (1) AS 43.55 from "Oil and Gas Production Taxes and Oil Surcharge" to "Oil  
8 and Gas Production Tax and Oil Surcharge";

9 (2) article 1 of AS 43.55 from "Oil and Gas Properties Production Taxes" to  
10 "Oil and Gas Production Tax";

11 (3) AS 43.55.011 from "Oil production tax" to "Oil and gas production tax";

12 (4) AS 43.55.025 from "Tax credit for oil and gas exploration or gas only  
13 exploration" to "Alternative tax credit for oil and gas exploration";

14 (5) AS 43.55.150 from "Determination of gross value" to "Determination of  
15 gross value at the point of production."

16 \* **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 RETROACTIVITY OF PROVISIONS OF ACT. Sections 5, 7 - 10, 12, 13, 15 - 18, 24  
19 - 29, and 31 - 39 of this Act are retroactive to April 1, 2006.

20 \* **Sec. 41.** This Act takes effect immediately under AS 01.10.070(c).



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 21 May 2006 TIME: 4:55pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 7

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: Final Please

CS SB 2001 (FIN) 24-GS2094\G

Bullock 5/21/06

plus 6 amendments - attached

Thanks

Mindy

Amendment #1  
adopted  
24-GS2094A  
conceptual

1 exceed

2 (A) one-half of the producer's or explorer's qualified capital  
3 expenditures that are incurred during the month for which the credit is taken, if  
4 the producer or explorer does not make an election under AS 43.55.160(f);

5 (B) 1/24 of the producer's or explorer's qualified capital  
6 expenditures that are incurred during the calendar year that includes the month  
7 for which the credit is taken, if the producer or explorer makes an election  
8 under AS 43.55.160(f);

9 (3) a producer or explorer may not take a tax credit for a transitional  
10 investment expenditure

11 (A) for any month that ends the later of

12 (i) July 31, 2013; or

13 (ii) the seventh anniversary of the last day of the month  
14 for which the producer first applies a credit under this subsection  
15 against a tax due under AS 43.55.011(e), if the producer did not have  
16 commercial production of oil or gas from a lease or property in the state  
17 before July 1, 2006;

18 (B) more than once; or

19 (C) if a credit for that expenditure was taken under  
20 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025;

21 (4) notwithstanding (d), (e), and (g) of this section, a producer or  
22 explorer may not transfer a tax credit or obtain a transferable tax credit certificate for a  
23 transitional investment expenditure.

24 (k) As a condition of receiving a tax credit under this section, a producer or  
25 explorer that obtains the tax credit for or directly related to a pipeline, facility, or other  
26 asset that is or becomes subject to regulation by the Federal Energy Regulatory  
27 Commission or the Regulatory Commission of Alaska, or a successor regulatory body  
28 shall at all times support and in all rate proceedings file to flow through 100 percent of  
29 the tax credits to ratepayers as a reduction in the costs of service for the pipeline,  
30 facility, or other asset.

31 (l) In this section, "qualified capital expenditure" means, except as otherwise

insert:  
In this section, "barrel of oil equivalent", or "boe", means,  
one barrel in the case of oil and 6,000 cubic feet  
in the case of gas.

1 during a calendar year to less than 80 percent of the tax that would otherwise be due  
2 without applying that credit. Any portion of a credit not used under this subsection  
3 may be applied in a later period.

4 (f) Under standards established in regulations adopted by the department and  
5 subject to appropriations made by law, the department, on the written application of  
6 the person to whom a transferable tax credit has been issued under (d) of this section  
7 and whose average amount of oil and gas produced a day taxable under  
8 AS 43.55.011(e) is not more than 50,000 barrels of oil equivalent for the <sup>a day</sup> preceding <sup>insert</sup>  
9 calendar year, shall issue a cash refund, in whole or in part, for the certificate if the  
10 department finds

11 (1) after investigation and audit of the tax credit claim by the  
12 department, that the applicant is entitled to the credit to the extent of the refund  
13 amount;

14 (2) within 24 months after having applied for the transferable tax credit  
15 certificate, that the applicant incurred a qualified capital expenditure or was the  
16 successful bidder on a bid submitted for a lease on state land under AS 38.05.180(f);

17 (3) that the amount of the refund would not exceed the total of  
18 qualified capital expenditures and successful bids described in (2) of this subsection  
19 that have not been the subject of a finding made under this paragraph for purposes of a  
20 previous refund;

21 (4) that the applicant does not have an outstanding liability to the state  
22 for unpaid delinquent taxes under this title; and

23 (5) that the sum of the amount of the refund applied for and amounts  
24 previously refunded to the applicant during the calendar year under this subsection  
25 would not exceed \$25,000,000.

26 (g) The issuance of a transferable tax credit certificate under (d) of this section  
27 does not limit the department's ability to later audit a tax credit claim to which the  
28 certificate relates or to adjust the claim if the department determines that the applicant  
29 was not entitled to the amount of the credit for which the certificate was issued. The  
30 tax liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is  
31 increased by the amount of the credit that exceeds that to which the applicant was

SENATE FINANCE COMMITTEE  
5/20/2006 COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	#3		
Motion	adopt		
<u>Motion by</u>	Stedman		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Conceptual

Insert language of CS SB 305 (FIN) 24-GS20521R  
 page 4 line 27-through page 5 line 19  
 AS43.55.011 (g) and (h) in Section 5

Except page 5 line 1  
 delete: .002  
 insert: .001

1 (2) except as to oil described in (1) of this subsection, 22.5 percent of  
2 the production tax value of the taxable oil and gas as calculated under AS 43.55.160.

3 (f) There is levied on the producer of oil or gas a tax for all oil and gas  
4 produced each month from each lease or property in the state the ownership or right to  
5 which constitutes a lessor's royalty interest under an oil and gas lease, except for oil  
6 and gas the ownership or right to which is exempt from taxation. The provisions of  
7 this subsection apply to a lessor's royalty interest under an oil and gas lease as follows:

8 (1) the rate of tax levied on oil produced from a lease is equal to five  
9 percent of the gross value at the point of production of the oil;

10 (2) the rate of tax levied on gas produced from a lease is equal to 1.667  
11 per cent of the gross value at the point of production of the gas;

12 (3) if the department determines that, for purposes of reducing the  
13 producer's tax liability under (1) or (2) of this subsection, the producer has received or  
14 will receive consideration from the lessor offsetting all or a part of the producer's  
15 royalty obligation, other than a deduction under AS 43.55.020(d) of the amount of a  
16 tax paid,

17 (A) notwithstanding (1) of this subsection, the tax is equal to

18 (i) for oil that is produced in the Cook Inlet sedimentary  
19 basin, as that term is defined by regulations adopted to implement  
20 AS 38.05.180(f)(4), five percent of the gross value at the production of  
21 the oil; and

22 (ii) for oil, except oil described in (i) of this  
23 subparagraph, and gas 22.5 percent of the gross value at the point of  
24 production of the oil; and

25 (B) notwithstanding (2) of this subsection, the tax is equal to  
26 7.5 percent of the gross value at the point of production of the gas.

27 (g) In addition to the taxes levied under (e) and (f) of this section, if the  
28 average ANS West Coast price per barrel of oil during a month exceeds \$50, there is  
29 levied on the producer of oil a tax for oil produced during that month from each lease  
30 or property in the state, less any oil the ownership or right to which is exempt from  
31 taxation. The tax levied under this subsection is equal to



SENATE FINANCE COMMITTEE

5/20/2006

COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	#3		
Motion	amend		
<u>Motion by</u>	Hoffman		
<u>Objection by</u>	Green		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stedman			✓
Senator Bunde			✓
Senator Dyson			✓
Senator Hoffman	✓		
Senator Olson	✓		
Co-Chair Wilken			✓
Co-Chair Green			✓
<u>Tally</u>			
Yea		2	
Nay		5	
Absent			
<u>MOTION</u>	Failed		

SB 305 page 5 line 1

delete: .002

insert: .0015

SENATE FINANCE COMMITTEE  
5/20/2006 COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	#4		
Motion	adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

conceptual  
 22.5% tax rate  
 retain 20% credit rate

SENATE FINANCE COMMITTEE

5/20/2006

COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	#5		
Motion	adopt		
<u>Motion by</u>	Stedman		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Withdrawn		

Limit tax on gas in Cook Inlet  
 so it could not exceed the cap set  
 in HCS CS SB 305 1 B.a

Conceptual Amendment #1

SB 2001  
24-GS2094\A

Offered at Senate Finance Committee

Offered By: \_\_\_\_\_

1. Reinstate the original Senate Finance Committee Substitute (SB 305, version R, page 4, subsections g and h) language for the trigger to begin at \$50 bbl. Change the multiplier from .002 to .001.
2. Limit the tax on gas produced from Cook Inlet so that it cannot exceed the cap set in the House Floor version (SB305, version B.a).

This substitution would be inserted on page 4 following line 4.

SB 305, version R subsections g and h provided for:

- In addition to the taxes levied, if the average ANS West Coast price per barrel exceeds \$50, there is levied on the producer of oil an oil tax.
- The tax levied under this subsection is equal to ANS West Coast price minus \$50 x .002 x ANS Wellhead price x 1 minus the PPT rate.

Amendment #6

Conceptual Amendment #6

SB 2001  
24-GS2094A

Offered at Senate Finance Committee

Offered By: Sens Bunde & Hoffman

Replace July 1, 2006 with an effective date of new production tax to be April 1, 2006 with all applicable dates adjusted to April 1, 2006.

Corresponding dates of July 31<sup>st</sup> should also be adjusted to April 30<sup>th</sup> to reflect the effective date of the tax to be April 1, 2006.

SENATE FINANCE COMMITTEE  
5/29/2006 COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	#6		
Motion	adopt		
<u>Motion by</u>	Bunde & Hoffman		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Effective date of tax

April 1, 2006

Conceptual



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 20 May 2006 TIME: 2:00pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 6

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: CS Workdraft Please!  
CS SB 2001 (FIN) 24-GS20941A

plus amendments - attached

Note: Committee grants authority to make  
necessary conforming & technical changes

Thanks  
*Mindy*

*Please deliver to*

Adopted

SENATE FINANCE  
COMMITTEE  
Amendment # #7  
To Bill Number: SB 2001  
Sponsor: Green  
Date: 5/2/06 Logged by: Mindy

AMENDMENT

SB 2001  
24-GS2094\G

Offered at Senate Finance Committee

Offered By: Sen. Green

Page 29 lines 3-8  
DELETE all lines referring to Section 30.

renumber sections accordingly

SENATE FINANCE COMMITTEE  
5/21 / 2006 COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	# 7		
Motion	adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<b>MOTION</b>	<b>Pass</b>		

Adopted

SENATE FINANCE

COMMITTEE

Amendment # #8

To Bill Number: SB 2001

Sponsor: Green

Date: 5/21/06 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE

BY Sen. Green

TO: CSSB 2001(FIN) (24-GS2094\G Work Draft: 5/21/06)

1 Page 4, line 13, following "section.":

2 Insert "However, application of this subsection may not, when added to the tax levied  
3 under (e) of this section, impose a tax levy of more than 50 percent of the production tax  
4 value of taxable oil and gas as calculated under AS 43.55.160."  
5

6 Page 4, line 17, following "divided by the", through line 19:

7 Delete all material

8 Insert "sum of (1) the number of barrels of that oil less three-quarters of the number of  
9 barrels of the taxable oil produced during that month from leases or properties in the  
10 Cook Inlet sedimentary basin, and (2) two-thirds of the number of barrels of oil  
11 equivalent of that gas, less (A) one-sixth of the number of barrels of oil equivalent of the  
12 taxable gas produced during that month from leases or properties in the state located  
13 south of 68 degrees 15 minutes North latitude outside the Cook Inlet sedimentary basin,  
14 and less (B) one-third of the number of barrels of oil equivalent of the taxable gas  
15 produced during that month from leases or properties in the Cook Inlet sedimentary  
16 basin. For purposes of this subsection, a barrel of oil equivalent is the amount of gas that  
17 has an energy content of 6,000,000 British thermal units. The department by regulation  
18 shall establish sampling, testing, and averaging methods for determining the energy  
19 content of a producer's gas produced during a month."  
20

21 Page 25, line 17, following "calendar year.":

22 Insert "An election made under this subsection applies to calculation of the tax under  
23 AS 43.55.011(e) and (g)."

SENATE FINANCE COMMITTEE  
5/21 / 2006 COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	#8		
Motion	adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<b>MOTION</b>	<b>Pass</b>		

Adopted

SENATE FINANCE  
COMMITTEE  
Amendment # #9  
To Bill Number: SB 2001  
Sponsor: Green  
Date: 5/24/00 Logged by Mindy

AMENDMENT

SB 2001  
24-GS2094\G

Offered at Senate Finance Committee

Offered By: Sen. Green

Page 4, line 4  
"[6.67] 11.25 percent of the gross"

This amount may need to be adjusted due to the variation in the calculation of gas tax rates as stated in Section 25. 43.55.160. Determination of production tax value of oil and gas located on page 19. The variation in the value of gas can be 1/3, 2/3 or 1/2, thereby making the 6.67 percent (or 1/3 of 20 percent) incorrect. The percent that may be inserted where 6.67 is stated would be more accurate as 11.25 percent.

SENATE FINANCE COMMITTEE  
5/21/2006 COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	#9		
Motion	adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

SENATE FINANCE  
COMMITTEE #10  
Amendment #  
To Bill Number: SB 2001  
Sponsor: Green  
Date: 5/21/06 Logged by: Mindy

A M E N D M E N T

SB 2001  
24-GS2094\G

Offered at Senate Finance Committee

Offered By: Sen. Green

Page 20, lines 20-28

20 a producer's lease expenditures for a period are costs upstream  
21 of the point of production of oil and gas that are incurred on or after April 1, 2006, by  
22 the producer during the period and that are direct|. | AND ordinary|. | and necessary costs of  
23 exploring for, developing, or producing oil or gas deposits located within the  
24 producer's leases or properties in the state or, in the case of land in which the producer  
25 does not own a working interest, direct|. | AND ordinary|. | and necessary costs of exploring for  
26 oil or gas deposits located within other land in the state; in determining whether costs  
27 are direct|. | AND ordinary|. | and necessary costs of exploring for, developing, or producing oil  
28 or gas deposits located within a lease or property or other land in the state.

Note: delete commas that are bracketed  
insert "and" where shown as: AND

SENATE FINANCE COMMITTEE  
5/21 / 2006 COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	# 10		
Motion	adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

SENATE FINANCE  
COMMITTEE # 11  
Amendment #             
To Bill Number: SB 2001  
Sponsor: Green  
Date: 5/21/00 Logged by: Mindy  
adopted

AMENDMENT

SB 2001  
24-GS2094\G

Offered at Senate Finance Committee

Offered By: Sen. Green

Page 34 lines 25-29  
Change paragraph as follows:  
Delete all text in red.

TRANSITION; [REGULATIONS AND] RETROACTIVITY OF REGULATIONS. [(a)  
The Department of Revenue may proceed to adopt regulations to implement the changes  
made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act).  
But not before the effective date of the law implemented by the regulation.  
(b)] Notwithstanding...

NOTE: See attached  
language in red to be deleted

1 (1) the amount of the surcharges that would have been imposed on the  
2 producer under AS 43.55, as the provisions of that chapter read on March 31, 2006, is due on  
3 the last day of each calendar month on oil produced from each lease or property during the  
4 preceding month;

5 (2) the portion, if any, of the surcharges imposed under AS 43.55.201(a), as  
6 amended by sec. 26 of this Act, and AS 43.55.300(a), as amended by sec. 28 of this Act, and  
7 that remains unpaid is due on the last day of the first month that begins at least 10 months  
8 after the effective date of secs. 26 and 28 of this Act.

9 (i) Notwithstanding any contrary provision of AS 43.55.201(c), as amended by sec.  
10 26 of this Act, or AS 43.55.300(c), as amended by sec. 28 of this Act, for oil produced after  
11 March 31, 2006, and before the first day of the first month that begins at least 10 months after  
12 the effective date of secs. 26 and 28 of this Act, at the time an amount of surcharge is due

13 (1) under (h)(1) of this section, the producer shall file the report of production  
14 required under former AS 43.55.201(c) and 43.55.300(c), as those provisions read on  
15 March 31, 2006; and

16 (2) under (h)(2) of this section, the producer shall file the report of production  
17 required under AS 43.55.201(c), as amended by sec. 26 of this Act, and AS 43.55.300(c), as  
18 amended by sec. 28 of this Act.

19 (j) For purposes of taxes to be calculated and due under (f)(1) of this section and  
20 statements to be filed under (g)(1) of this section, regulations that were adopted by the  
21 Department of Revenue under AS 43.55, as the provisions of that chapter read on March 31,  
22 2006, and that were in effect on that date apply to those taxes and statements.

23 \* Sec. 38. The uncodified law of the State of Alaska is amended by adding a new section to  
24 read:

25 TRANSITION: REGULATIONS AND RETROACTIVITY OF REGULATIONS. (a)  
26 ~~The Department of Revenue may proceed to adopt regulations to implement the changes~~  
27 ~~made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),~~  
28 ~~but not before the effective date of the law implemented by the regulation.~~

delete

29 (b) Notwithstanding any contrary provision of AS 44.62.240, a regulation adopted by  
30 the Department of Revenue to implement, interpret, make specific, or otherwise carry out the  
31 provisions of secs. 5, 7 - 10, 12, 13, 15 - 18, 20, 24 - 29, 31 - 35, and 37 of this Act may apply

SENATE FINANCE COMMITTEE

5/21/2006

COMMITTEE ACTION

Bill Number	SB 2001		
Amendment	# 11		
Motion	adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	✓		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

adopted

24-GS2094G  
Bullock  
5/21/06

CS FOR SENATE BILL NO. 2001(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the production tax on oil and gas and to conservation surcharges on  
2 oil; relating to criminal penalties for violating conditions governing access to and use of  
3 confidential information relating to the production tax; ~~providing that provisions of~~  
4 ~~AS 43.55 do not apply to certain oil and gas subject to a contract executed under the~~  
5 ~~Alaska Stranded Gas Development Act~~; amending the definition of 'gas' as that  
6 definition applies in the Alaska Stranded Gas Development Act; making conforming  
7 amendments; and providing for an effective date."

delete

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

9 \* Section 1. The uncoded law of the State of Alaska is amended by adding a new section  
10 to read:

11 LEGISLATIVE INTENT. (a) It is the intent of the legislature through sec. 11 of this  
12 Act to confirm by clarification the long-standing interpretation of AS 43.55.020(f) by the  
13 Department of Revenue.

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 2001  
(S) Publish Date: 5/20/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
Title Relating to the production tax on oil and gas RDU Resource Development  
etc. Component Oil & Gas Development  
Sponsor Rules by Request of Governor  
Requester Governor Component No. 439

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

There is no anticipated fiscal impact for DNR associated with implementation of this legislation.

Prepared by: Bill VanDyke, Acting Director  
Division: Oil & Gas  
Approved by: Michael Monge, Commissioner  
Agency: Natural Resources

Phone 907-269-8800  
Date/Time 5/19/2006  
Date 5/19/2006

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 2001  
(S) Publish Date: 5/20/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: An Act Relating to the Production Tax on RDU: Tax and Treasury  
Oil and Gas Component: Tax  
Sponsor: Rules Committee Component No. \_\_\_\_\_  
Requester: Governor Component No. 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	875.0	892.5	910.4	928.6	947.1	966.1
Travel						
Contractual	525.0	437.9	118.2	118.6	121.0	123.4
Supplies	42.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous (OH office, etc)	53.0	53.0	53.0	53.0	53.0	53.0
<b>TOTAL OPERATING</b>	<b>1,495.0</b>	<b>1,433.4</b>	<b>1,081.6</b>	<b>1,100.2</b>	<b>1,121.1</b>	<b>1,142.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<i>See analysis section</i>					
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,495.0	1,433.4	1,081.6	1,100.2	1,121.1	1,142.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>1,495.0</b>	<b>1,433.4</b>	<b>1,081.6</b>	<b>1,100.2</b>	<b>1,121.1</b>	<b>1,142.5</b>

Estimate of any current year (FY2006) cost: 275.0

Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time	10	10	10	10	10	10
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Relative to Status Quo

This bill would amend the oil and gas production tax by basing the tax on the net value of the oil and gas. The net value is the wellhead value (net of royalty) less all qualified lease expenditures, including capital and operating costs, and property taxes. The net income would be subject to a 20% tax, less a credit of 20% which applies to capital costs upstream of the point of production. There would be an additional allowance of up to \$12 million per company. The allowance expires in 2016. In addition, as a transition provision, there would be a 20% credit for capital costs incurred over the period July 1, 2001 through July 1, 2006, recoverable at \$1 for every \$2 in capital expenditures. Transition costs cannot be recovered after 2013.

Prepared by: Robynn Wilson, Michael Williams, Roger Marks, and Cheryl Nienhuis  
Division: Tax Division

Phone 269-1019  
Date/Time 5/20/06 9:00 AM

Approved by: Jerry Burnett  
Agency: Department of Revenue

Date 5/20/2006

FISCAL NOTE # 2

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. SB 2001

ANALYSIS CONTINUATION

The additional conservation surcharge on oil is increased from 3 cents to 4 cents.

The bill would be effective July 1, 2006.

The figures in the table below reflect the revenues that would be received from the bill relative to the status quo under various prices. The figures reflect North Slope activity; the impact on Cook Inlet is expected to be modest. The status quo assumes the January 2005 ELF aggregation decision by the Department of Revenue for Prudhoe Bay continues.

The cost assumptions are as follows:

- \$100 mm/yr exploration
- \$1/bbl on-going capital on all barrels
- \$3.50/bbl developmental capital on 2/3 of existing conventional oil
- \$8/bbl developmental capital on 2/3 of existing heavy oil
- \$3.50/bbl developmental capital on new conventional oil
- \$8/bbl developmental capital on new heavy oil
- \$3/bbl operating cost on conventional oil
- \$5/bbl operating cost on heavy oil

The table shows the 2006-2012 receipts from the bill, sensitive to different oil prices. These include the Department of Revenue forecast, a \$40 price, and a \$50 price. (Note that the status quo numbers are slightly different from what is reflected in the Spring 2006 Revenue Sources Book because of volume adjustments from the oil spill, and because of some differences between what some taxpayers actually remit and what is ultimately expected to be collected.)

Operating expenditures include costs for 5 additional positions for auditors: 1 O & G Specialist (Range 23), 1 O & G Revenue Auditor IV (Range 22), and 3 O & G Revenue Auditor III (Range 20). These positions would be used to fulfill additional audit responsibilities inherent in a net profits tax, an amendment in the Senate regarding requires additional staff. In addition, we request 2 additional Tax Tech III positions (Range 14) to process additional information and tax returns that will be required, and additional credit applications anticipated. Personal Services reflect a 2% yearly increase.

Contractual expenditures include \$100,000 and \$70,000 for programming in FY 07 and FY 08, respectively, \$300,000 in each of FY 07 and FY 08 for help in writing regulations, \$100,000 in each year for consulting services and an estimate of chargeback costs.. Supplies include computers and other supplies necessary for new positions.

FISCAL NOTE # 2

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. SB 2001

ANALYSIS CONTINUATION Millions of Dollars

Fiscal Year	DOR Forecast	Col. 15 Status Quo Tax	Col. 16 Tax from Bill	Col. 17 Gain from Bill
2007	\$53.60	989	1,689	700
2008	\$46.90	759	1,273	514
2009	\$25.50	355	286	-68
2010	\$25.50	315	255	-61
2011	\$25.50	281	251	-30
2012	\$25.50	271	247	-25

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Fiscal Year	Medium Price	Status Quo Tax	Tax from Bill	Gain from Bill
2007	\$40.00	708	926	218
2008	\$40.00	655	901	246
2009	\$40.00	631	969	338
2010	\$40.00	582	938	356
2011	\$40.00	544	960	416
2012	\$40.00	536	969	433

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Fiscal Year	High Price	Status Quo Tax	Tax from Bill	Gain from Bill
2007	\$60.00	1,120	1,948	829
2008	\$60.00	1,032	1,894	863
2009	\$60.00	978	1,956	979
2010	\$60.00	901	1,908	1,007
2011	\$60.00	842	1,949	1,107
2012	\$60.00	831	1,969	1,138

# FISCAL NOTE

3

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSSB 2001 (FIN)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title An Act Relating to the Production Tax on RDU Tax and Treasury  
Oil and Gas Component Tax  
 Sponsor Rules Committee  
 Requester Senate Finance Component No. 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	577.6	589.2	600.9	613.0	625.2	637.7
Travel						
Contractual	517.5	487.9	118.2	118.6	121.0	123.4
Supplies	42.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous [OH office, etc]	37.1	37.1	37.1	37.1	37.1	37.1
<b>TOTAL OPERATING</b>	<b>1,174.2</b>	<b>1,114.1</b>	<b>756.2</b>	<b>768.7</b>	<b>783.3</b>	<b>798.2</b>

<b>CAPITAL EXPENDITURES</b>						
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**CHANGE IN REVENUES ( )** *See analysis section*

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,174.2	1,114.1	756.2	768.7	783.3	798.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>1,174.2</b>	<b>1,114.1</b>	<b>756.2</b>	<b>768.7</b>	<b>783.3</b>	<b>798.2</b>

Estimate of any current year (FY2006) cost: \_\_\_\_\_  
 Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time	7	7	7	7	7	7
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Relative to Status Quo

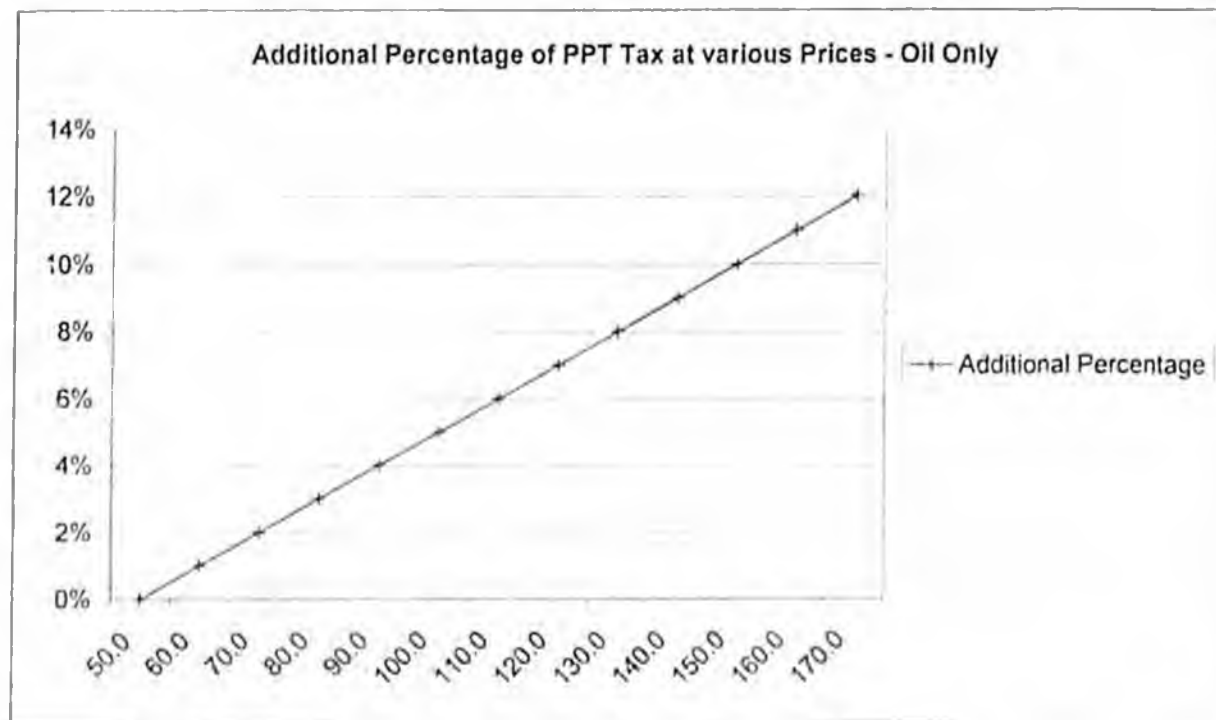
This bill would amend the oil and gas production tax by basing the tax on the net value of the oil and gas. The net value is the wellhead value (net of royalty) less all qualified lease expenditures, including capital and operating costs, and property taxes. The net income would be subject to a 20% tax, less a credit of 20% which applies to capital costs upstream of the point of production. There would be an additional allowance of up to \$12 million per company for companies producing less than 50,000 barrels per day, which is scaled down to zero between 50,000 and 100,000 barrels per day. The allowance expires in 2016. In addition, as a transition provision, there would be a 20% credit for capital costs incurred over the period April 1, 2001 through April 1, 2006, recoverable at \$1 for every \$2 in capital expenditures. Transition costs cannot be recovered after 2013.

Prepared by: Dan Dickinson  
 Division: Tax Division  
 Approved by: Kevin Jardell  
 Agency: Office of the Governor

Phone: 269-1019  
 Date/Time: 5/21/08 5:30 AM  
 Date: 5/21/2008

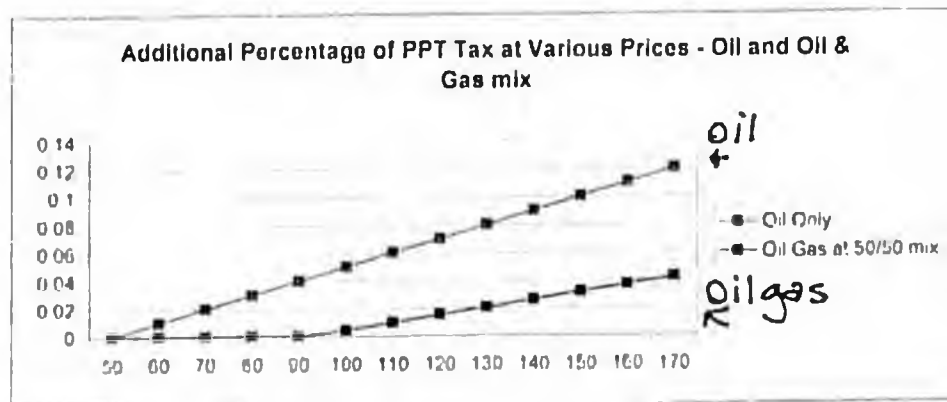
Progressivity  
Base Case - Oil Only

Price	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0	130.0	140.0	150.0	160.0	170.0
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	35.0	45.0	55.0	65.0	75.0	85.0	95.0	105.0	115.0	125.0	135.0	145.0	155.0
Progressivity Adjuster (h)	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0
Progressivity Price Index	-	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0
Progressivity Multiplier (g)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001
Product	0%	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	11%	12%
Base Rate (e)	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%
Combined Rate	22.50%	23.50%	24.50%	25.50%	26.50%	27.50%	28.50%	29.50%	30.50%	31.50%	32.50%	33.50%	34.50%
\$/barrel Tax	\$ 7.88	\$ 10.58	\$ 13.48	\$ 16.58	\$ 19.88	\$ 23.38	\$ 27.08	\$ 30.98	\$ 35.08	\$ 39.38	\$ 43.88	\$ 48.58	\$ 53.48
Percentage of Destination Price	16%	18%	19%	21%	22%	23%	25%	26%	27%	28%	29%	30%	31%



Progressivity  
Econ One Case - 50% Gas and Oil

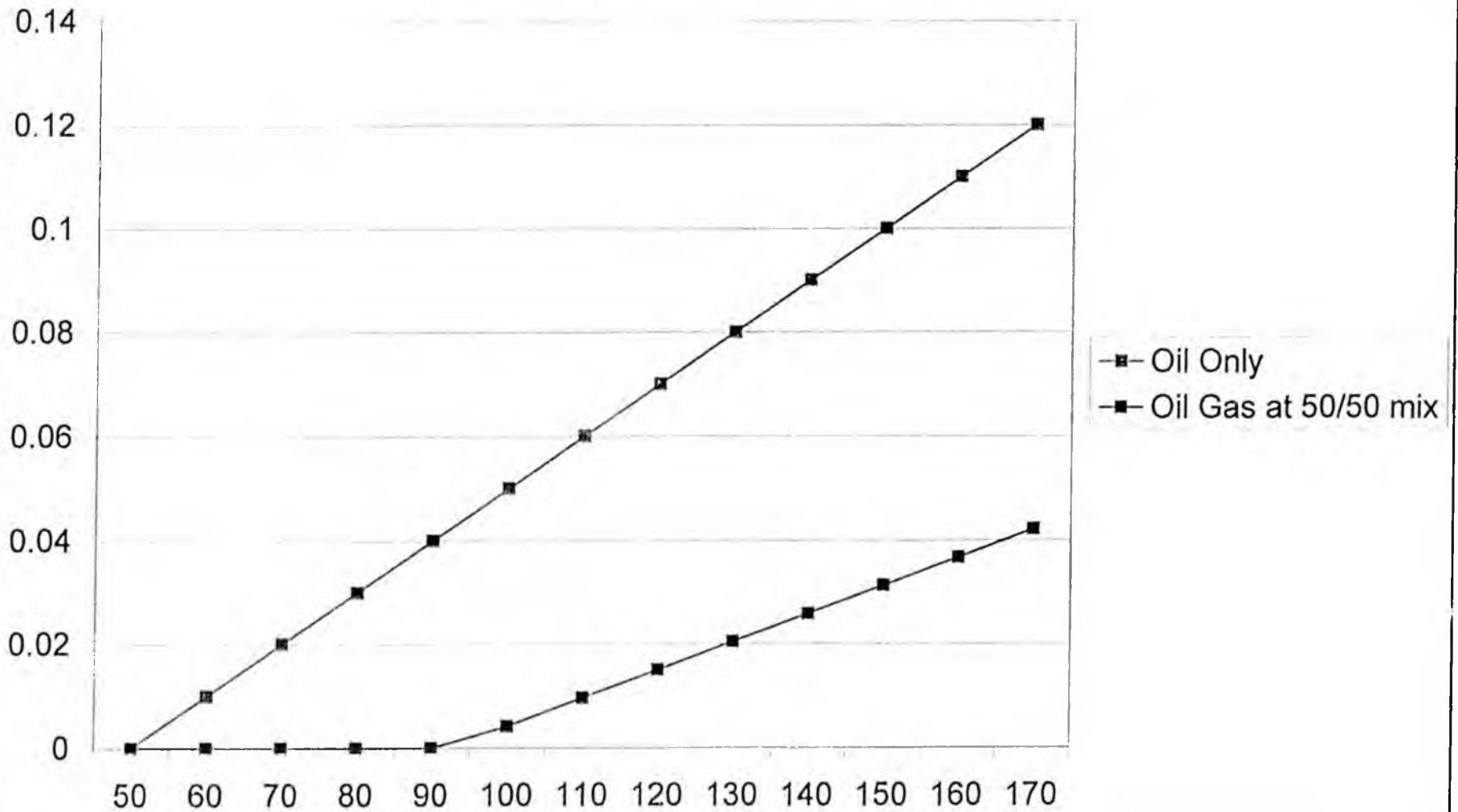
Price	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0	130.0	140.0	150.0	160.0	170.0
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	35.0	45.0	55.0	65.0	75.0	85.0	95.0	105.0	115.0	125.0	135.0	145.0	155.0
Progressivity Adjuster (h)	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0
Progressivity Price Index	-	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0
Progressivity Multiplier (g)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001
Product	0%	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	11%	12%
Base Rate (n)	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%
Combined Rate	22.50%	23.50%	24.50%	25.50%	26.50%	27.50%	28.50%	29.50%	30.50%	31.50%	32.50%	33.50%	34.50%
<b>\$/barrel Tax</b>	<b>\$ 7.88</b>	<b>\$ 10.58</b>	<b>\$ 13.48</b>	<b>\$ 16.58</b>	<b>\$ 19.88</b>	<b>\$ 23.38</b>	<b>\$ 27.08</b>	<b>\$ 30.98</b>	<b>\$ 35.08</b>	<b>\$ 39.38</b>	<b>\$ 43.88</b>	<b>\$ 48.58</b>	<b>\$ 53.48</b>
	16%	18%	19%	21%	22%	23%	25%	26%	27%	28%	29%	30%	31%
Price at 1/6 plus 1/2 GRE	4.2	5.0	5.8	6.7	7.5	8.3	9.2	10.0	10.8	11.7	12.5	13.3	14.2
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	(10.8)	(10.0)	(9.2)	(8.3)	(7.5)	(6.7)	(5.8)	(5.0)	(4.2)	(3.3)	(2.5)	(1.7)	(0.8)
% of gas in total portfolio mix	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Net or "Production Tax Value"	12.1	17.5	22.9	28.3	33.8	39.2	44.6	50.0	55.4	60.8	66.3	71.7	77.1
Progressivity Adjuster (h)	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0
Progressivity Price Index	(22.9)	(17.5)	(12.1)	(6.7)	(1.3)	4.2	9.6	15.0	20.4	25.8	31.3	36.7	42.1
Progressivity Multiplier (g)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001
Product	0%	0%	0%	0%	0%	0%	1%	2%	2%	3%	3%	4%	4%
Base Rate (n)	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%
Combined Rate	22.50%	22.50%	22.50%	22.50%	22.50%	22.92%	23.46%	24.00%	24.54%	25.08%	25.63%	26.17%	26.71%
<b>\$</b>	<b>2.72</b>	<b>3.94</b>	<b>5.18</b>	<b>6.38</b>	<b>7.59</b>	<b>8.98</b>	<b>10.46</b>	<b>12.00</b>	<b>13.60</b>	<b>15.26</b>	<b>16.98</b>	<b>18.75</b>	<b>20.59</b>
	5%	7%	7%	8%	8%	9%	10%	10%	10%	11%	11%	12%	12%



Price	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0	130.0	140.0	150.0	160.0	170.0	180.0	190.0
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	35.0	45.0	55.0	65.0	75.0	85.0	95.0	105.0	115.0	125.0	135.0	145.0	155.0	165.0	175.0
Progressivity Adjuster (h)	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0
Progressivity Price Index	-	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0	130.0	140.0
Progressivity Multiplier (g)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001
Product	0%	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	11%	12%	13%	14%
Base Rate (e)	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%
Combined Rate	22.50%	23.50%	24.50%	25.50%	26.50%	27.50%	28.50%	29.50%	30.50%	31.50%	32.50%	33.50%	34.50%	35.50%	36.50%
\$/barrel Tax	\$ 7.88	\$ 10.58	\$ 13.48	\$ 16.58	\$ 19.88	\$ 23.38	\$ 27.08	\$ 30.88	\$ 35.08	\$ 39.38	\$ 43.88	\$ 48.58	\$ 53.48	\$ 58.58	\$ 63.88
	16%	18%	19%	21%	22%	23%	25%	26%	27%	28%	29%	30%	31%	33%	34%
Price at 1/6 plus 1/2 GRE	4.2	5.0	5.8	6.7	7.5	8.3	9.2	10.0	10.8	11.7	12.5	13.3	14.2	15.0	15.8
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	(10.8)	(10.0)	(9.2)	(8.3)	(7.5)	(6.7)	(5.8)	(5.0)	(4.2)	(3.3)	(2.5)	(1.7)	(0.8)	-	0.8
% of gas in total portfolio mix	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
Net or "Production Tax Value"	30.4	39.5	48.6	57.7	66.8	75.8	84.9	94.0	103.1	112.2	121.3	130.3	139.4	148.5	157.6
Progressivity Adjuster (h)	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0
Progressivity Price Index	(4.6)	4.5	13.6	22.7	31.8	40.8	49.9	59.0	68.1	77.2	86.3	95.3	104.4	113.5	122.6
Progressivity Multiplier (g)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001
Product	0%	0%	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	10%	11%	12%
Base Rate (e)	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%
Combined Rate	22.50%	22.95%	23.86%	24.77%	25.68%	26.58%	27.49%	28.40%	29.31%	30.22%	31.13%	32.03%	32.94%	33.85%	34.76%
\$	\$ 6.84	\$ 9.07	\$ 11.59	\$ 14.28	\$ 17.14	\$ 20.16	\$ 23.35	\$ 26.70	\$ 30.21	\$ 33.89	\$ 37.74	\$ 41.75	\$ 45.93	\$ 50.27	\$ 54.77
	14%	15%	17%	18%	19%	20%	21%	22%	23%	24%	25%	26%	27%	28%	29%

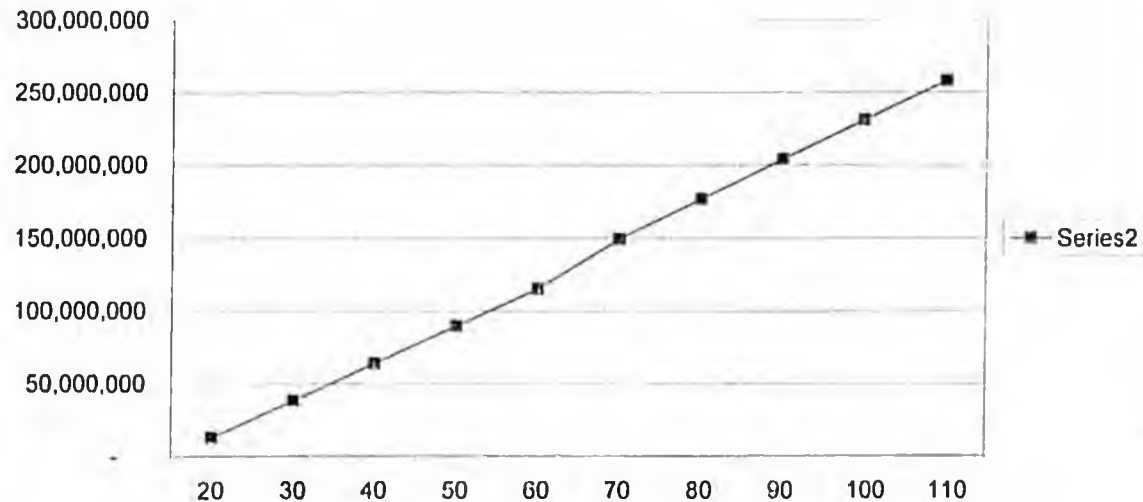
Price	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0	130.0	140.0	150.0	160.0	170.0	180.0	190.0
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	35.0	45.0	55.0	65.0	75.0	85.0	95.0	105.0	115.0	125.0	135.0	145.0	155.0	165.0	175.0
Progressivity Adjuster (h)	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0
Progressivity Price Index	-	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0	130.0	140.0
Progressivity Multiplier (g)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001
Product	0%	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	11%	12%	13%	14%
Base Rate (e)	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%
Combined Rate	22.50%	23.50%	24.50%	25.50%	26.50%	27.50%	28.50%	29.50%	30.50%	31.50%	32.50%	33.50%	34.50%	35.50%	36.50%
<b>\$/barrel Tax</b>	<b>\$ 7.88</b>	<b>\$ 10.58</b>	<b>\$ 13.48</b>	<b>\$ 16.58</b>	<b>\$ 19.88</b>	<b>\$ 23.38</b>	<b>\$ 27.08</b>	<b>\$ 30.98</b>	<b>\$ 35.08</b>	<b>\$ 39.38</b>	<b>\$ 43.88</b>	<b>\$ 48.58</b>	<b>\$ 53.48</b>	<b>\$ 58.58</b>	<b>\$ 63.88</b>
	16%	18%	19%	21%	22%	23%	25%	26%	27%	28%	29%	30%	31%	33%	34%
<b>Price at 1/6 plus</b>	<b>8.3</b>	<b>10.0</b>	<b>11.7</b>	<b>13.3</b>	<b>15.0</b>	<b>16.7</b>	<b>18.3</b>	<b>20.0</b>	<b>21.7</b>	<b>23.3</b>	<b>25.0</b>	<b>26.7</b>	<b>28.3</b>	<b>30.0</b>	<b>31.7</b>
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	(6.7)	(5.0)	(3.3)	(1.7)	-	1.7	3.3	5.0	6.7	8.3	10.0	11.7	13.3	15.0	16.7
% of gas in total portfolio mix	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
Net or "Production Tax Value"	30.8	40.0	49.2	58.3	67.5	76.7	85.8	95.0	104.2	113.3	122.5	131.7	140.8	150.0	159.2
Progressivity Adjuster (h)	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0	35.0
Progressivity Price Index	(4.2)	5.0	14.2	23.3	32.5	41.7	50.8	60.0	69.2	78.3	87.5	96.7	105.8	115.0	124.2
Progressivity Multiplier (g)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001
Product	0%	1%	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	11%	12%	12%
Base Rate (e)	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%	22.5%
Combined Rate	22.50%	23.00%	23.92%	24.83%	25.75%	26.67%	27.58%	28.50%	29.42%	30.33%	31.25%	32.17%	33.08%	34.00%	34.92%
<b>\$</b>	<b>6.94</b>	<b>\$ 9.20</b>	<b>\$ 11.76</b>	<b>\$ 14.49</b>	<b>\$ 17.38</b>	<b>\$ 20.44</b>	<b>\$ 23.68</b>	<b>\$ 27.08</b>	<b>\$ 30.64</b>	<b>\$ 34.38</b>	<b>\$ 38.28</b>	<b>\$ 42.35</b>	<b>\$ 46.59</b>	<b>\$ 51.00</b>	<b>\$ 55.58</b>
	14%	15%	17%	18%	19%	20%	22%	23%	24%	25%	26%	26%	27%	28%	29%

### Additional Percentage of PPT Tax at Various Prices - Oil and Oil & Gas mix



Daily Vol	800,000	800,000	800,000	800,000	800,000	850,000	850,000	850,000	850,000	850,000
Days	365	365	365	365	365	365	365	365	365	365
Royalty	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%
base volume	255,500,000	255,500,000	255,500,000	255,500,000	255,500,000	271,468,750	271,468,750	271,468,750	271,468,750	271,468,750
Price	\$ 20.00	\$ 30.00	\$ 40.00	\$ 50.00	\$ 60.00	\$ 70.00	\$ 80.00	\$ 90.00	\$ 100.00	\$ 110.00
Costs	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)
Net Value	\$ 5.00	\$ 15.00	\$ 25.00	\$ 35.00	\$ 45.00	\$ 55.00	\$ 65.00	\$ 75.00	\$ 85.00	\$ 95.00
Net Value	1,277,500,000	3,832,500,000	6,387,500,000	8,942,500,000	11,497,500,000	14,930,781,250	17,645,468,750	20,360,156,250	23,074,843,750	25,789,531,250
1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
result	12,775,000	38,325,000	63,875,000	89,425,000	114,975,000	149,307,813	176,454,688	203,601,563	230,748,438	257,895,313

Direct effect on Tax Revenues of 1% change in PPT rate



# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
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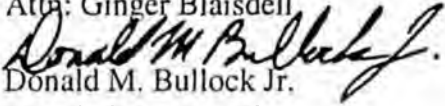
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

May 20, 2006

**SUBJECT:** Constitutional issues under sec. 30 of SB 2001  
(Work Order No. 24-GS2094\A)

**TO:** Senator Lyda Green  
Co-Chair of Senate Finance Committee  
Attn: Ginger Blaisdell

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

You asked what the constitutional implications of sec. 30 of SB 2001 were relating to art. I, sec. 15 and art. IX, secs. 1 and 4 of the state constitution. You also asked about the effect of deleting sec. 30.

In my opinion, sec. 30 of SB 2001 allows the contracting away of the power to tax in a way that may be contrary to art. IX, secs. 1 and 4 of the state constitution. However, if the power is contracted away, art. I, sec. 15 would be a bar to a future legislature exercising the power to tax to the extent it has been contracted away, unless the contract is voided by the court as unconstitutional or contrary to public policy.

Deleting sec. 30 would remove what could be interpreted as legislative approval for contracting away the power to tax oil and gas production subject to a contract executed under AS 43.82. However, the issue is not whether the legislature has authorized the contracting away, but whether the constitution allows it. Section 30 may be an attempt to make the contracting away look like an exemption. But, it will still be the contract that will prevent the tax from applying, and any contract that locks in a payment in lieu of taxes will tie the hands of future legislatures, which is what art. IX, sec. 1 was intended to prevent.<sup>1</sup>

Section 30 of SB 2001 reads as follows:

\* Sec. 30. AS 43.55 is amended by adding a new section to article 4 to read:

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<sup>1</sup> The only situation in which sec. 30 might be determinative is if the contract created under the Stranded Gas Act explicitly recognized that the payment in lieu of taxes (and nonapplicability of taxes under AS 43.55) would end if a future legislature repealed AS 43.55.890.

**Sec. 43.55.890. Relationship to Alaska Stranded Gas Development Act.** During the period that a valid contract executed under AS 43.82, as amended, is in force, AS 43.55.011 - 43.55.310 do not apply to oil or gas for which a producer is obligated to make payments in lieu of taxes or oil surcharges. A payment in lieu of taxes includes delivery of gas to the state in lieu of taxes.

Under this provision, a contract that obligates a producer to make payments in lieu of taxes or oil surcharges contracts away the state's power of taxation under AS 43.55.011 - 43.55.310 by barring the application of those provisions. Section 30 appears to offer legislative endorsement for contracting away the power to impose a production tax under AS 43.55. However, whether affirmed by the enactment of a provision like sec. 30 or not, the contracting away of the state's taxation power is probably contrary to art. IX, sec. 1 of the state constitution and is not within the exceptions provided in art. IX, sec. 4.

**Article IX, sec. 1**

Article IX, sec. 1, Constitution of the State of Alaska reads as follows:

**Taxing Power.** The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

This section has been discussed only twice by the Alaska Supreme Court and both discussions were published in 1983 decisions. In *Alascom, Inc. v. North Slope Borough*,<sup>2</sup> the North Slope Borough claimed that any statute of limitations applied to bar supplemental assessments would contravene art. IX, sec. 1. The Borough argued, "that applying a statute of limitations to tax assessments and collections would constitute an unconstitutional surrender or suspension of the taxing power." The court rejected this argument by writing:

We believe that the response to the Borough's contention is provided by Article [IX], section 4, of the Alaska Constitution, the provision addressing exemptions from taxation. After setting forth specific exemptions this provision states that "other exemptions of like *or different* kind may be granted by general law" (emphasis supplied). In our view this constitutional grant of power to except encompasses the power to require that taxes be assessed and collected within a certain period of time or be forever barred.<sup>3</sup>

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<sup>2</sup> 659 P.2d 1175 (Alaska 1983).

<sup>3</sup> 659 P.2d at 1179 (footnote omitted).

In other words, the legislature had enacted a statute limiting the period in which a borough could make assessments and such an enactment was consistent with art. IX, sec. 4. If property was not assessed within the limited period, the property was effectively exempt for the period in which the assessment was not timely made.

The second case discussing the art. IX sections is not helpful in analyzing the issues you raise. In *Cogan v. State, Dep't of Revenue*,<sup>4</sup> the court merely referred to art IX, secs. 1 and 4 as authority for deciding that paying taxes is an obligation of a person to the people and to the State should the legislature impose them.<sup>5</sup>

Attorney General Bruce Botelho discussed art. IX, sec. 1 in an opinion discussing the Alaska Stranded Gas Development Act, SCS CSHB 393(FIN) (1998). In that opinion, addressed to Governor Tony Knowles, the Attorney General wrote:

There are a number of other important issues raised by this legislation. First, art. IX, sec. 1, of the Alaska Constitution provides that "the power of taxation shall never be surrendered." The bill raises the "surrender of the taxing power" question because it contemplates development of a long-term contract that reflects the fiscal terms applicable to the sponsors of a stranded gas project. The legislation itself, however, is not unconstitutional under art. IX, because it does not purport to bind future legislatures. Instead, it merely authorizes the commissioners of revenue and natural resources to develop appropriate contract terms. Authorization to execute the contract will not be delegated to the executive branch until the legislature has had an opportunity to review the contract and ascertain whether its terms are in the public interest. Even if that authorization is given, the legislature may expressly provide that the contract's fiscal terms are binding only so long as no future legislature decides to exercise the taxing power in a different way. In other words, the "surrender of the taxing power" issue may never arise. A concrete analysis of the issue must be left to the day the legislature decides whether, and if so under what terms, it will allow execution of a contract at all.<sup>6</sup>

The Attorney General's opinion offers that the contracting away issue could be avoided by having the contract recognize that future legislatures may make changes to the tax. However, if the contract precludes future legislative action, the art. IX, sec. 1 prohibition against contracting away the taxation power would need to be resolved. The enactment of sec. 30 in SB 2001 seems to be an effort to provide legislative endorsement of contracting away the state's power to tax under AS 43.55.

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<sup>4</sup> 657 P.2d 396 (Alaska 1983).

<sup>5</sup> 657 P.2d at 398.

<sup>6</sup> 1998 Alas. AG LEXIS 7 (May 29, 1998).

During my research, I found a short discussion relevant to the issue of surrendering the power to tax by contract. An 1862 decision of the California Supreme Court quoted an Ohio court case that discussed the surrender by contract of the taxing power. In *Fall v. The County of Sutter*,<sup>7</sup> the California Supreme Court wrote:

A series of cases arose under a general Banking Law of the State of Ohio, wherein it was claimed that the Legislature had authority to surrender by contract the taxing power on bank capital; and having the power, had so exercised it. The first is the case of the *Ohio Life Ins. and Trust Co. v. De Bolt* (16 How.) In this case Chief Justice Taney, in delivering the opinion of the Court, held as follows:

The powers of sovereignty confided to a legislative body are undoubtedly a *trust* committed to them, to be executed to the best of their judgment for the public good, and no one Legislature can by its own act disarm their successors of any of the powers or rights of sovereignty confided to the legislative body, *unless they are authorized to do so by the Constitution under which they are elected*. They cannot, therefore, by contract deprive a future Legislature of the power of imposing any tax they may deem necessary for the public service, or of exercising any other act of sovereignty confided to the legislative body, *unless the power to make such contract is conferred upon them by the Constitution of the State*; and in every controversy on this subject the question must depend upon the Constitution of the State, and the extent of the power thereby conferred on the legislative body." [Emphasis in original.]

#### Article IX, sec. 4

As the court noted in *Alascom, supra*, the Constitution of the State of Alaska identified art IX, sec. 4 as authority for providing exemptions from tax. That section reads as follows:

**Exemptions.** The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation.

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<sup>7</sup> 21 Cal. 237 (1862).

Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

Reporting for the finance committee to the Alaska Constitutional Convention on January 16, 1956, Leslie Nerland explained the reasoning behind the wording that ultimately became art. IX, sec. 1 and the relationship between that section and what would become art IX, sec. 4, Constitution of the State of Alaska:

Section 1 of this proposal has been altered slightly from the usual wording of a number of state constitutions and also the model state constitution in that which, as some of you perhaps might have noticed, generally reads, "The power of taxation shall never be surrendered, suspended or contracted away." The Committee felt that definitely the power of taxation should never be surrendered so we inserted a semicolon,<sup>[8]</sup> but we did feel that there would possibly be occasion and good justification in the future for such things as allowing an industry-wide exemption to encourage new industry to come in and that is the reason for the particular wording there. That is later provided for under Section 4."

Article IX, sec. 4, provides for exemptions from tax provided by law. In other words, exemptions may be enacted by the legislature (and repealed or amended by a subsequent legislature), but there is no authority in the Constitution of the State of Alaska to suspend the power of the state to tax in a contract between the state and a taxpayer.<sup>9</sup>

#### Article I, sec. 15

While an exemption may be repealed or amended by the legislature, enacting a law that impairs a contract violates art I, sec. 15, Constitution of the State of Alaska. Should the contract include a provision that fixes the tax or payment in lieu of tax, and the provision is not void under art. IX, sec. 1 or as a matter of public policy, a future legislature or initiative would be precluded from changing the that provision. Article I, sec. 15 reads as follows:

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<sup>8</sup> In its final form, art. IX, sec. 1 has a period, rather than a semicolon, following the clause prohibiting the surrender of the power to tax.

<sup>9</sup> Two instances of the state suspending or reducing a tax for a limited period are found in AS 43.55.011(b) and AS 43.65.010. AS 43.55.011(b) provides that the severance tax on oil production is 12.25 percent for the first five years after the start of production occurring after June 30, 1981, and 15 percent thereafter. Under AS 43.65.010(a), "all new mining operations are exempt from the [mining license tax] for three and one-half years after production begins."

**Prohibited State Action.** No bill of attainder or ex post facto law shall be passed. *No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed.* No conviction shall work corruption of blood or forfeiture of estate. [Emphasis added.]

The United States Constitution has a similar provision in art. I, sec. 10. That section bars any state from passing a law "impairing the obligation of contracts." In *State of New Jersey v. Wilson*,<sup>10</sup> the United States Supreme Court considered a situation in which New Jersey had exempted land from tax and the exemption had been made part of a contract. A contract that transferred land to an Indian tribe stated "that the lands to be purchased for the Indians aforesaid shall not hereafter be subject to any tax, any law usage or custom to the contrary thereof, in any wise notwithstanding."<sup>11</sup> Another part of the agreement provided that the land could not be sold. Sometime after the transfer, the tribe asked the legislature to amend the agreement to allow the sale of the land so that the tribe could relocate. The legislature enacted a law allowing the transfer, but did not modify the shield from taxation that applied to the land. The following year, the legislature repealed the tax-shield provision that had been included in the original law that transferred the land to the Indian tribe. The purchasers of the land from the Indians brought suit against the state on the ground that the repeal of the tax-shield provision had harmed them and had the effect of impairing their contract for purchasing land not subject to tax.<sup>12</sup> Although successful in the New Jersey courts, the United States Supreme Court found that the legislature's repeal of the tax-shield provision violated art. I, sec. 10, Constitution of the United States.<sup>13</sup>

The Supreme Court provided an alternative that would have removed the tax-shield in return for allowing the Indians to sell the land:

It is not doubted but that the state of New Jersey might have insisted on a surrender of this privilege as the sole condition on which a sale of the property should be allowed. But this condition has not been insisted on. The land has been sold, with the assent of the state, with all its privileges and immunities. The purchaser succeeds, with the assent of the state, to all the rights of the Indians. He stands, with respect to this land, in their place and claims the benefit of their contract. This contract is certainly impaired by a law which would annul this essential part of it.<sup>14</sup>

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<sup>10</sup> 11 U.S. 164; 3 L. Ed. 303 (1812).

<sup>11</sup> 11 U.S. at 165, 3 L. Ed. at 304.

<sup>12</sup> 11 U.S. at 166, 3 L. Ed. 304.

<sup>13</sup> 11 U.S. at 167, 3 L. Ed. 304.

<sup>14</sup> 11 U.S. at 167, 3 L. Ed. 304.

In short, the State of New Jersey had the opportunity to remove the tax-shield from the land at the time it amended the agreement with the tribe. The State removed the covenant that prevented the tribe from selling the land, but did not remove the covenant that made the land free of any future tax. When the land was subsequently sold with the covenant attached, the legislature was prohibited from repealing the covenant.

### Conclusions

Article IX, sec. 1, Constitution of the State of Alaska, prohibits the state from contracting away the power to tax, but art. IX, sec. 4 allows the legislature to grant a suspension or exemption from tax by general law. Section 30 of SB 2001 appears to provide a legislative endorsement of a contract provision that contracts away the power to impose a tax under AS 43.55. The legislative "endorsement" of contracting away the power to tax does not make the contracting away constitutional. Accordingly, I believe that it is more likely than not that a court would find that sec. 30 is void under art. IX, secs. 1 and 4 of the state constitution.

However, if sec. 30 or a contract provision of the type authorized in sec. 30 is not held invalid, art. I, sec. 15, Constitution of the State of Alaska, and art. I, sec. 10, Constitution of the United States, would prohibit a subsequent legislature from passing a law that impairs the obligations in that contract.<sup>15</sup>

I have found no constitutional authority for the legislature or the governor to contract away the power of taxation. In my opinion, deleting sec. 30 from the bill has no effect on the issue of whether a contract executed under AS 43.82 may contract away the state's power of taxation.

DMB:lmb  
06-172.lmb

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<sup>15</sup> Sec. 30 of SB 2001 is limited to taxes under AS 43.55.011 - 43.55.310, which leaves the possibility that the legislature may enact new taxes in a different chapter of AS 43. Such an enactment may raise additional issues under the state constitution and contract law that are outside of the scope of this memorandum.

Governor's PPT Legislation  
Alaska Senate  
2006 Special Session

Dan E. Dickinson CPA  
May 20, 2006

# Gov's PPT Legislation

- 1 billion of investment
- Each percentage change in credit (with no change in investment) is 10 million dollars a year in taxes.
- At 60 Dollars a barrel, current volumes
- Each percentage change in tax rate (with no change in investment) is 110 million dollars

# Gov's PPT Legislation

- Additional \$12 million Credit for All Producers
- Only three producers disqualified under House Limitations (\$36 million a year)
- Move from retroactive April 1 date to prospective July 1 date
- At forecast price \$53.60, \$175 million

# Cook Inlet

## Sec. 5. 43.55.011 (g)

- Tax Calculation for each Lease or Property producing gas on April 1, 2006:
- Calculate under bill, then calculate cap:
  - (A) Amount of Gas produced in month times
  - (B) Rate in 12 month base period, times
    - Rate= [10% \* ELF \* (1-royalty rate)]
  - (C) PV in the 12 month base period

## Sec. 5. 43.55.011 (g)

- Tax Calculation for each new Lease or Property after April 1, 2006, thru 2016:
- Calculate under bill, then calculate cap:
  - (A) Amount of Gas produced in month times
  - (B) Rate in 12 month base period for all CI leases or properties, times
    - Rate= [10% \* ELF \* (1-royalty rate)]
  - (C) PV in the 12 month base period for all CI leases or properties

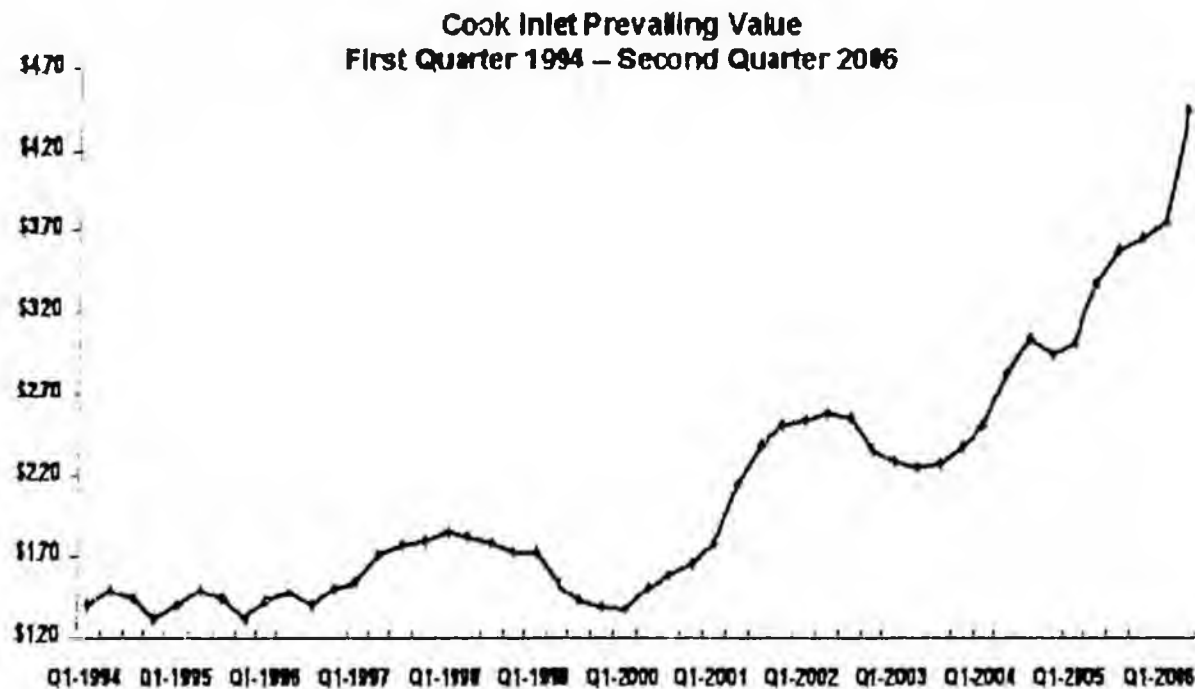
## Sec. 5. 43.55.011 (g)

- PV = \$3.86
- Average ELF was .5
- New fields tax cap will be
- $3.86 \times 10\% \times .5 \times .875 = 17$  cents per mcf
- Existing fields between zero (0 ELF) and 34 cents (100% ELF) per mcf

## Sec. 5. 43.55.011 (g)

- For purposes of cap have to isolate tax on each mcf of CI gas (Sec 25. page 21 line 18 -21)
- “the lease expenditures that are applicable to oil or gas produced in an area of the state shall be determined under regulations adopted by the department that provide for reasonable methods of allocating costs between oil and gas and between areas of the state”

# Cook Inlet Gas Prevailing Value



Source: Department of Revenue Tax Division Website

6:55:12 PM

9

# Sec 25 AS 43.55.160 (a)

- (A) Gross Value P/P of Oil statewide
- Less  $\frac{3}{4}$  of Gross Value P/P of CI oil
- (B) Plus  $\frac{2}{3}$  G/V at P/P of Gas not from CI
- Less  $\frac{1}{6}$  of G/V P/P of non NS gas
- Less all lease expenditures except CI
- [plus  $\frac{1}{3}$  GV <sup>point of production</sup> ~~oil~~ CI gas
- Less CI gas lease expenditures]
- = Production Tax Value

# Gas Revenues

- $\frac{2}{3}$  on North Slope
- $\frac{2}{3} - \frac{1}{6} = \frac{1}{2}$  elsewhere statewide
- $\frac{1}{3}$  in Cook Inlet

COMPARISON OF PPT BILL VERSIONS--HIGHLIGHTS

5/20/2006

source: DOR

	governor's bill	House Resources CS Version L	SENATE (page refs = S. Fin. CS)	HOUSE (page refs = H. Fin CS)	Governor's Bill (Special Session)
<b>tax rate</b>	20%	20%	22.5% general 5% on Cook Inlet oil	21.5% .011(e)--page 3 3/4 rev. excl. for Cook Inlet oil .160(a) --page 10 ELF tax ceiling on Cook Inlet gas 011(i) --page 5	20.0% .011(e) - page 3 3/4 rev. excl. for Cook Inlet oil% 160(a) - page 10 ELF tax ceiling on Cook Inlet gas 011(g) - page 4
<b>credit rate</b>	011(a)--page 3 20% 024(a)--page 5	011(a)--page 3 20% 024(a)--page 8	011(e)--pages 3-4 25% 024(a)--page 7	20% 024(a)--pages 7-8	20% 024(a) - page 6-7
<b>private royalty tax rate</b>	no special rate	5%	5% oil & 1.67% gas Report from Commish	5% oil & 1.67% gas Report from Commish	5% oil & 1.67% gas Report from Commish
<b>Gas (GRE)</b>	n/a	011(e)--page 3-4	011(f)--page 4 & 180 pg 26	011(f)--pages 3-4 & 180 pg 27	011(f) - pages 3-4 & 180 p. 26
<b>Gas (GRE)</b>	n/a		Gas Revenue (Value) Exclusion of 2/3 (1/3 included) 160(a) page 10	ANS gas 2/3 included (1/3 excl.) CI gas 1/3 included, new gas 1/2 included 160(a) page 10	ANS gas 2/3 included (1/3 excl.) CI gas 1/3 included, new gas 1/2 included 160(a) pages 18-10
<b>progressivity surcharge</b>	none	over \$50/bbl WTI. (.3% x (WTI - \$50) x gross. <\$110 rate is 37.5% 011(f)--page 4	over \$50/bbl. (ANSwc - \$50) x 002 x ANSwth x .775 x bbls (oil only) 011(g) and (h)--pages 4-5	over \$35/bbl (net value/boe) x 0025 x net value 011(g) and (h) page 4-5	none
<b>progressivity tax cap</b>		no	no	when combined with PPT basic tax, cannot exceed 50% 011(g) --page	n/a
<b>special gas progressivity?</b>	n/a	yes 011(i)--page 4-5	no	n/a	n/a
<b>progressivity deductible?</b>	n/a	yes 160(a)--page 18	no 160(d)(2)(O)--page 22	no 160(d)(2)(O)--page 23	n/a
<b>transition</b>	5 yr lookback of capex 160(g)--page 15	3 mo. of capex & opex. ? Sec. 42 uncodified--page 30	5 yrs lookback capex 2 for 1 recoupment 024(i)--pages 10-11	5 yrs lookback capex 2 for 1 recoupment 024(j) --page 11	5 yrs lookback capex 2 for 1 recoupment 024(j) --pages 10-11
<b>transition treatment</b>	deduction over 0 yr, if ANSwc > \$40 160(g)--page 15	deduction over 9 mo, no oil price test Sec. 42 uncodified--page 30	20% credit, no oil price test 024(i) --pages 10-11	20% credit, no oil price test 024(j) --pages 11-12	20% credit, no oil price test 024(j) --pages 10-11
<b>sunset of transition</b>	no	n/a	3/31/2013 024(i) --page 11	7 yr rolling 024 (j)(3) page 12	7 yr rolling 024 (j)(3) page 11
<b>base allowance</b>	\$75M deduction 160(i)--page 16	\$12M credit (equates to \$60M ded.) 170(a) --page 23	Revised 5000 bbl equivalent credit capped at 14 million 170(a) --pages 25-26	\$12M credit (\$1M per month) (equates to \$60M ded.) based on production 170(a) --page 25	\$12M credit (\$1M per month) (equates to \$60M ded.) NOT based on production 170(a) --page 25
<b>sunset of base allowance</b>	none	3/31/2010 (exp. incurred) 170(e) --page 24	3/31/2010 w/commissioner report 170(a) --page 25, 180 pg 26-27	10 yr rolling 170(a) --page 26	10 yr rolling 170(d) --pages 25-26
<b>safe harbor</b>	00%, annual true up, no interest 020(a) --page 3	00% with interest 020(g) --page 7	95%, annual true up, no interest 020(a) --pages 5-6	95%, annual true up, no interest 020(a) --page 6	95%, annual true up, no interest 020(a) --page 5
<b>pmt &lt; safe harbor??</b>	interest only 020(a) --page 3	5% penalty + interest 020(h) --page 7	interest only 020(a) --pages 5-6	interest only 020(a) --page 6	interest only 020(a) --page 6
<b>effective date</b>	7/1/2006 page 20	4/1/2006 Section 45 --page 30	4/1/2006 Sec 40 --page 33	4/1/2006 Sec 39 --page 35	7/1/2006 Sec 36 --page 31
<b>transition payment</b>	none	6 mos. pymt on old system, true up in 7th mo	6 mos. pymt on old system, true up in 7th mo	11 mos. pymt on old system, true up in 11th mo	10 mos. pymt on old system, true up in 11th mo

5/20/06

7:22:22 P.1

COMPARISON OF PPT BILL VERSIONS--HIGHLIGHTS

5/20/2006

source: DOR

	governor's bill	House Resources CS Version L sec. 39--page 28	SENATE (page refs = S. Fin. CS) sec. 37(g)--pages 31-32	HOUSE (page refs = H. Fin CS) Sec. 36(g)(h)--page 33	Governor's Bill (Special Session) Sec. 37(f)(g)--pages 32-33
spill surcharge total spill surcharge split (.201/.300) spill surcharge payable	no change (5 cents) 2/3 no change	no change (5 cents) 1/4 increase 1 cent page 24--25	increase 1 cent, to 6 cents 1/5 increase 2 cent 201, 300 pages 27--28	no change (5 cents) 1/4 increase 1 cent page 28	no change (5 cents) 1/4 increase 1 cent pages 27-28
surcharge treatment	creditable against PPT page 17--18	not creditable, not ded. 160(d)(2)(L)--page 21	not creditable, not ded. 160(d)(2)(L)--page 22	not creditable, not ded. 160(d)(2)(L)--page 23	not creditable, not ded. 160(d)(12)--page 22
SB 185 credit	no change	extends 10 years, only usable against PPT 025(b), 025(f)--page 11-12	extends 10 years, fixes \$20 m issue 025(b), 025(f)--page 12-14	extends 10 years; removes \$20M Cook Inlet limit 025(b), 025(f)--pages 13-14	extends 10 years; removes \$20M Cook Inlet limit 025(b), 025(f)--pages 12-15
abandonment	no provision	no credit 024(f)(2)--page 11	no deduction or credit for abandonment on old production 160(d)(2)(P) page 22	no deduction or credit for abandonment on old production (improved language) 160(d)(2)(P)--page 23	no deduction or credit for abandonment on old production (further improved language) 160(d)(16)--pages 22-23
credits usable	against PPT only 024(a)--page 3	against PPT only 024(a)--page 8	against PPT only 024(a)--page 7	against PPT only 024(a)--page 7-8	against PPT only 024(a)--pages 6-7
credits transferable	yes--20% tax limit 024(d)--(e)--page 6	yes--20% tax limit 024(d)--(e)--page 8-9	yes--20% tax limit 024(d)--(e)--page 8-9	yes--20% tax limit 024(d)--(e)--page 9-10	yes--20% tax limit 024(d)--(e)--pages 8-9
credits refundable?	no	up to \$10M depends on investment 024(f)(5)--page 9-10	no	up to \$25M depends on investment, production limit 024(f)--page 10	up to \$25M depends on investment, production limit 024(f)--page 9
credits for annual loss	yes, at 20% 024(b)--page 5	yes, at 20% 024(b)--page 8	yes, at 22.5% 024(b)--page 8	yes, at 20% 024(b)--page 8-9	yes, at 20% 024(b)--pages 7-8
point of production	upstream of gas treatment upstream 900(7)--page 19	upstream of gas treatment upstream 900(7)--page 25-26	upstream of gas treatment upstream 900(7)--pages 28-29	upstream of gas treatment upstream (definition added) 900(7)--page 29	upstream of gas treatment upstream (definition added) 900(7)--pages 29-30
DNR royalty value	yes 150(d)--page 11	yes 150(d)--page 17-18	no	no	no
IRC sec 482 as a tool	no	no	yes (incl. §6962) 160(j)--page 24	yes (w/c §6662) 160(i)--page 25	yes (w/o §6662) 160(i)--page 25
oil spill	yes, if on lease (except negligent) (not precluded)	catastrophic spill not ded 160(c)--page 19	yes, if on lease (except negligent) (not precluded)	any oil spill cleanup costs not ded. 160(d)(2)(Q)--(page 23)	any oil spill cleanup costs not ded. (exception for gravel pad) 160(d)(17)--(page 23)
DNR gets exploration Data			yes 024(a) page 8	yes 024(a) pages 7-8	yes 024(a)--page 7
020 (i) Sales Language			yes 020(f) page 7	yes 020(f) page 7	yes 020(f) page 6
NPSL regs after industry practice			yes 160(c)(1)(A) page 20	yes 160(c)(1)(A) page 21	yes (in Alaska only) 160(c)(1)(A) page 20
credit flow through re. FERC			yes, regulated & non regulated 024(j)--pages 11-12	yes, regulated fac. only 024(k)--page 12	yes, regulated fac. only 024(k)--page 11
high energy fund established			no	yes 011(h)	no

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Lynne Smith

**From:** The Alliance [info@alaskaalliance.com]  
**Sent:** Monday, May 22, 2006 8:53 AM  
**To:** Lynne Smith  
**Subject:** Alliance PPT Update for May 22



## PPT Update for May 22

- The Senate is expected this afternoon to adopt a new version of the Petroleum Production Tax (PPT) that calls for a higher tax rate and lower rate of escalation in the windfall profits tax than the bill passed by the House in the waning hours of the regular legislative session earlier this month.
- Senate Finance on Sunday ratified a committee substitute to Senate Bill 2001 calling for a 22.5% tax rate, a 20% investment credit and a windfall profits tax at net prices exceeding \$35/barrel. The escalator on the windfall profits tax would be 0.1% for every \$1/barrel increase above \$35/barrel.
- On Saturday, Senate Finance adopted an amendment calling for a \$50/barrel trigger price (also net). The lower trigger price (\$35/barrel) was adopted Sunday without discussion or explanation.
- At current prices (about \$65/barrel for North Slope crude oil), the Senate CS would result in a total tax of about 24% -- slightly lower than the tax take under the version earlier adopted by the House. At lower prices it would result in a higher tax.
- Senate Finance also voted to impose the PPT retroactively, with an April 1 effective date.
- House Finance has scheduled its first hearing on CSSB 2001 later today, but isn't planning action on the bill until after the legislature's Memorial Day break, scheduled to begin at the close of business Tuesday.
- Any additional changes in the House will require Senate concurrence prior to final passage.
- The current special session must end by midnight on June 8.
- Gov. Frank Murkowski plans to introduce amendments to the Stranded Gas Development Act after Memorial Day as well, and to call a second special session starting June 9.

CSSB 2001
<p>22.5% tax / 20% investment credit (oil);            5.625% tax / 20% credit (Cook Inlet oil);            7.5% tax / 20% credit (Cook Inlet gas); 15%            tax / 20% credit (North Slope gas); 11.25%            tax / 20% credit (all other gas)</p>
<p>Windfall Profits Tax about 0.1% per \$1            increase in oil price above \$35/barrel (net            value), capped at 50%</p>
<p>Recovery of 5 years capex, 1-for-2            recoupment</p>
<p>\$12MM production tax credit available to            producers with less than 100,000            barrels/day production (excludes BP,            ConocoPhillips &amp; ExxonMobil)</p>
<p>No credit for abandonment on old            production</p>
<p>Effective date: April 1, 2006</p>
<p>Not a credit &amp; increased 1c/bbl, from 5c to            6c (5c deposit in Prevention Mitigation            Account and 1c into Response Mitigation            Account)</p>
<p>Credits transferrable and provision for            state to buy back credits (excludes BP,            ConocoPhillips and ExxonMobil)</p>
<p>&gt;\$1.6 billion tax increase</p>

# LEGAL SERVICES

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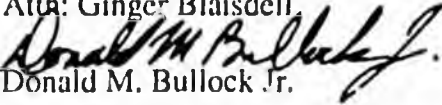
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## MEMORANDUM

May 20, 2006

**SUBJECT:** Constitutional issues under sec. 30 of SB 2001  
(Work Order No. 24-GS2094A)

**TO:** Senator Lyda Green  
Co-Chair of Senate Finance Committee  
Attn: Ginger Blaisdell

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

You asked what the constitutional implications of sec. 30 of SB 2001 were relating to art. I, sec. 15 and art. IX, secs. 1 and 4 of the state constitution. You also asked about the effect of deleting sec. 30.

In my opinion, sec. 30 of SB 2001 allows the contracting away of the power to tax in a way that may be contrary to art. IX, secs. 1 and 4 of the state constitution. However, if the power is contracted away, art. I, sec. 15 would be a bar to a future legislature exercising the power to tax to the extent it has been contracted away, unless the contract is voided by the court as unconstitutional or contrary to public policy.

Deleting sec. 30 would remove what could be interpreted as legislative approval for contracting away the power to tax oil and gas production subject to a contract executed under AS 43.82. However, the issue is not whether the legislature has authorized the contracting away, but whether the constitution allows it. Section 30 may be an attempt to make the contracting away look like an exemption. But, it will still be the contract that will prevent the tax from applying, and any contract that locks in a payment in lieu of taxes will tie the hands of future legislatures, which is what art. IX, sec. 1 was intended to prevent.<sup>1</sup>

Section 30 of SB 2001 reads as follows:

\* Sec. 30. AS 43.55 is amended by adding a new section to article 4 to read:

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<sup>1</sup> The only situation in which sec. 30 might be determinative is if the contract created under the Stranded Gas Act explicitly recognized that the payment in lieu of taxes (and nonapplicability of taxes under AS 43.55) would end if a future legislature repealed AS 43.55.890.

**Sec. 43.55.890. Relationship to Alaska Stranded Gas Development Act.** During the period that a valid contract executed under AS 43.82, as amended, is in force, AS 43.55.011 - 43.55.310 do not apply to oil or gas for which a producer is obligated to make payments in lieu of taxes or oil surcharges. A payment in lieu of taxes includes delivery of gas to the state in lieu of taxes.

Under this provision, a contract that obligates a producer to make payments in lieu of taxes or oil surcharges contracts away the state's power of taxation under AS 43.55.011 - 43.55.310 by barring the application of those provisions. Section 30 appears to offer legislative endorsement for contracting away the power to impose a production tax under AS 43.55. However, whether affirmed by the enactment of a provision like sec. 30 or not, the contracting away of the state's taxation power is probably contrary to art. IX, sec. 1 of the state constitution and is not within the exceptions provided in art. IX, sec. 4.

#### Article IX, sec. 1

Article IX, sec. 1, Constitution of the State of Alaska reads as follows:

**Taxing Power.** The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

This section has been discussed only twice by the Alaska Supreme Court and both discussions were published in 1983 decisions. In *Alascom, Inc. v. North Slope Borough*,<sup>2</sup> the North Slope Borough claimed that any statute of limitations applied to bar supplemental assessments would contravene art. IX, sec. 1. The Borough argued, "that applying a statute of limitations to tax assessments and collections would constitute an unconstitutional surrender or suspension of the taxing power." The court rejected this argument by writing:

We believe that the response to the Borough's contention is provided by Article [IX], section 4, of the Alaska Constitution, the provision addressing exemptions from taxation. After setting forth specific exemptions this provision states that "other exemptions of like *or different* kind may be granted by general law" (emphasis supplied). In our view this constitutional grant of power to except encompasses the power to require that taxes be assessed and collected within a certain period of time or be forever barred.<sup>3</sup>

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<sup>2</sup> 659 P.2d 1175 (Alaska 1983).

<sup>3</sup> 659 P.2d at 1179 (footnote omitted).

In other words, the legislature had enacted a statute limiting the period in which a borough could make assessments and such an enactment was consistent with art. IX, sec. 4. If property was not assessed within the limited period, the property was effectively exempt for the period in which the assessment was not timely made.

The second case discussing the art. IX sections is not helpful in analyzing the issues you raise. In *Cogan v. State, Dep't of Revenue*,<sup>4</sup> the court merely referred to art IX, secs. 1 and 4 as authority for deciding that paying taxes is an obligation of a person to the people and to the State should the legislature impose them.<sup>5</sup>

Attorney General Bruce Botelho discussed art. IX, sec. 1 in an opinion discussing the Alaska Stranded Gas Development Act, SCS CSHB 393(FIN) (1998). In that opinion, addressed to Governor Tony Knowles, the Attorney General wrote:

There are a number of other important issues raised by this legislation. First, art. IX, sec. 1, of the Alaska Constitution provides that "the power of taxation shall never be surrendered." The bill raises the "surrender of the taxing power" question because it contemplates development of a long-term contract that reflects the fiscal terms applicable to the sponsors of a stranded gas project. The legislation itself, however, is not unconstitutional under art. IX, because it does not purport to bind future legislatures. Instead, it merely authorizes the commissioners of revenue and natural resources to develop appropriate contract terms. Authorization to execute the contract will not be delegated to the executive branch until the legislature has had an opportunity to review the contract and ascertain whether its terms are in the public interest. Even if that authorization is given, the legislature may expressly provide that the contract's fiscal terms are binding only so long as no future legislature decides to exercise the taxing power in a different way. In other words, the "surrender of the taxing power" issue may never arise. A concrete analysis of the issue must be left to the day the legislature decides whether, and if so under what terms, it will allow execution of a contract at all.<sup>6</sup>

The Attorney General's opinion offers that the contracting away issue could be avoided by having the contract recognize that future legislatures may make changes to the tax. However, if the contract precludes future legislative action, the art. IX, sec. 1 prohibition against contracting away the taxation power would need to be resolved. The enactment of sec. 30 in SB 2001 seems to be an effort to provide legislative endorsement of contracting away the state's power to tax under AS 43.55.

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<sup>4</sup> 657 P.2d 396 (Alaska 1983).

<sup>5</sup> 657 P.2d at 398.

<sup>6</sup> 1998 Alas. AG LEXIS 7 (May 29, 1998).

During my research, I found a short discussion relevant to the issue of surrendering the power to tax by contract. An 1862 decision of the California Supreme Court quoted an Ohio court case that discussed the surrender by contract of the taxing power. In *Fall v. The County of Sutter*,<sup>7</sup> the California Supreme Court wrote:

A series of cases arose under a general Banking Law of the State of Ohio, wherein it was claimed that the Legislature had authority to surrender by contract the taxing power on bank capital; and having the power, had so exercised it. The first is the case of the *Ohio Life Ins. and Trust Co. v. De Bolt* (16 How.) In this case Chief Justice Taney, in delivering the opinion of the Court, held as follows:

The powers of sovereignty confided to a legislative body are undoubtedly a *trust* committed to them, to be executed to the best of their judgment for the public good, and no one Legislature can by its own act disarm their successors of any of the powers or rights of sovereignty confided to the legislative body, *unless they are authorized to do so by the Constitution under which they are elected*. They cannot, therefore, by contract deprive a future Legislature of the power of imposing any tax they may deem necessary for the public service, or of exercising any other act of sovereignty confided to the legislative body, *unless the power to make such contract is conferred upon them by the Constitution of the State*; and in every controversy on this subject the question must depend upon the Constitution of the State, and the extent of the power thereby conferred on the legislative body." [Emphasis in original.]

#### Article IX, sec. 4

As the court noted in *Alascom, supra*, the Constitution of the State of Alaska identified art IX, sec. 4 as authority for providing exemptions from tax. That section reads as follows:

**Exemptions.** The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation.

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<sup>7</sup> 21 Cal. 237 (1862).

Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

Reporting for the finance committee to the Alaska Constitutional Convention on January 16, 1956, Leslie Nerland explained the reasoning behind the wording that ultimately became art. IX, sec. 1 and the relationship between that section and what would become art IX, sec. 4, Constitution of the State of Alaska:

Section 1 of this proposal has been altered slightly from the usual wording of a number of state constitutions and also the model state constitution in that which, as some of you perhaps might have noticed, generally reads, "The power of taxation shall never be surrendered, suspended or contracted away." The Committee felt that definitely the power of taxation should never be surrendered so we inserted a semicolon,<sup>[8]</sup> but we did feel that there would possibly be occasion and good justification in the future for such things as allowing an industry-wide exemption to encourage new industry to come in and that is the reason for the particular wording there. That is later provided for under Section 4."

Article IX, sec. 4, provides for exemptions from tax provided by law. In other words, exemptions may be enacted by the legislature (and repealed or amended by a subsequent legislature), but there is no authority in the Constitution of the State of Alaska to suspend the power of the state to tax in a contract between the state and a taxpayer.<sup>9</sup>

#### Article I, sec. 15

While an exemption may be repealed or amended by the legislature, enacting a law that impairs a contract violates art I, sec. 15, Constitution of the State of Alaska. Should the contract include a provision that fixes the tax or payment in lieu of tax, and the provision is not void under art. IX, sec. 1 or as a matter of public policy, a future legislature or initiative would be precluded from changing the that provision. Article I, sec. 15 reads as follows:

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\* In its final form, art. IX, sec. 1 has a period, rather than a semicolon, following the clause prohibiting the surrender of the power to tax.

<sup>9</sup> Two instances of the state suspending or reducing a tax for a limited period are found in AS 43.55.011(b) and AS 43.65.010. AS 43.55.011(b) provides that the severance tax on oil production is 12.25 percent for the first five years after the start of production occurring after June 30, 1981, and 15 percent thereafter. Under AS 43.65.010(a), "all new mining operations are exempt from the [mining license tax] for three and one-half years after production begins."

**Prohibited State Action.** No bill of attainder or ex post facto law shall be passed. *No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed.* No conviction shall work corruption of blood or forfeiture of estate. [Emphasis added.]

The United States Constitution has a similar provision in art. I, sec. 10. That section bars any state from passing a law "impairing the obligation of contracts." In *State of New Jersey v. Wilson*,<sup>10</sup> the United States Supreme Court considered a situation in which New Jersey had exempted land from tax and the exemption had been made part of a contract. A contract that transferred land to an Indian tribe stated "that the lands to be purchased for the Indian aforesaid shall not hereafter be subject to any tax, any law usage or custom to the contrary thereof, in any wise notwithstanding."<sup>11</sup> Another part of the agreement provided that the land could not be sold. Sometime after the transfer, the tribe asked the legislature to amend the agreement to allow the sale of the land so that the tribe could relocate. The legislature enacted a law allowing the transfer, but did not modify the shield from taxation that applied to the land. The following year, the legislature repealed the tax-shield provision that had been included in the original law that transferred the land to the Indian tribe. The purchasers of the land from the Indians brought suit against the state on the ground that the repeal of the tax-shield provision had harmed them and had the effect of impairing their contract for purchasing land not subject to tax.<sup>12</sup> Although successful in the New Jersey courts, the United States Supreme Court found that the legislature's repeal of the tax-shield provision violated art. I, sec. 10, Constitution of the United States.<sup>13</sup>

The Supreme Court provided an alternative that would have removed the tax-shield in return for allowing the Indians to sell the land:

It is not doubted but that the state of New Jersey might have insisted on a surrender of this privilege as the sole condition on which a sale of the property should be allowed. But this condition has not been insisted on. The land has been sold, with the assent of the state, with all its privileges and immunities. The purchaser succeeds, with the assent of the state, to all the rights of the Indians. He stands, with respect to this land, in their place and claims the benefit of their contract. This contract is certainly impaired by a law which would annul this essential part of it.<sup>14</sup>

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<sup>10</sup> 11 U.S. 164; 3 L. Ed. 303 (1812).

<sup>11</sup> 11 U.S. at 165, 3 L. Ed. at 304.

<sup>12</sup> 11 U.S. at 166, 3 L. Ed. 304.

<sup>13</sup> 11 U.S. at 167, 3 L. Ed. 304.

<sup>14</sup> 11 U.S. at 167, 3 L. Ed. 304.

In short, the State of New Jersey had the opportunity to remove the tax-shield from the land at the time it amended the agreement with the tribe. The State removed the covenant that prevented the tribe from selling the land, but did not remove the covenant that made the land free of any future tax. When the land was subsequently sold with the covenant attached, the legislature was prohibited from repealing the covenant.

### Conclusions

Article IX, sec. 1, Constitution of the State of Alaska, prohibits the state from contracting away the power to tax, but art. IX, sec. 4 allows the legislature to grant a suspension or exemption from tax by general law. Section 30 of SB 2001 appears to provide a legislative endorsement of a contract provision that contracts away the power to impose a tax under AS 43.55. The legislative "endorsement" of contracting away the power to tax does not make the contracting away constitutional. Accordingly, I believe that it is more likely than not that a court would find that sec. 30 is void under art. IX, secs. 1 and 4 of the state constitution.

However, if sec. 30 or a contract provision of the type authorized in sec. 30 is not held invalid, art. I, sec. 15, Constitution of the State of Alaska, and art. I, sec. 10, Constitution of the United States, would prohibit a subsequent legislature from passing a law that impairs the obligations in that contract.<sup>15</sup>

I have found no constitutional authority for the legislature or the governor to contract away the power of taxation. In my opinion, deleting sec. 30 from the bill has no effect on the issue of whether a contract executed under AS 43.82 may contract away the state's power of taxation.

DMB:lmb  
06-172.lmb

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<sup>15</sup> Sec. 30 of SB 2001 is limited to taxes under AS 43.55.011 - 43.55.310, which leaves the possibility that the legislature may enact new taxes in a different chapter of AS 43. Such an enactment may raise additional issues under the state constitution and contract law that are outside of the scope of this memorandum.

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May 20, 2006

The Honorable Ben Stevens  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the oil and gas production tax.

This bill is substantially similar to HCS CSSB 305(FIN) am H, which was the version of SB 305 that passed the House on May 8, 2006. Like SB 305, this bill would eliminate the economic limit factor (ELF) from the determination of production tax, and would replace it with a more progressive and investment-friendly tax system.

This bill does make some changes to the final House version of SB 305. Apart from editorial adjustments, those changes are as follows:

1. Section 5 of the bill replaces the 21.5 percent tax rate that appeared in the final House version of SB 305 with what we believe is the more appropriate 20 percent rate.
2. The additional "progressivity" tax based on a price index, added by the House and contained in sec. 5 of the final House version of SB 305, is eliminated as excessive, along with the related "high energy cost offset fund" provision.
3. The treatment of cost deductions ("lease expenditures") in sec. 25 of the bill is reorganized and clarified, and the reference to industry

practices and standards is limited to the better defined and more relevant in-state practices and standards rather than the entire United States. The cost adjustment provision, AS 43.55.160(e), is clarified to avoid double-counting adjustments that are made in the calculation of lease expenditures.

4. Several revisions have been made in the list of items excluded from deductible costs in sec. 25 of the bill. The term "gross negligence" is substituted for the term "negligence" in AS 43.55.160(d)(6); "well pad" is substituted for "well" in AS 43.55.160(d)(16), and the scope of the exclusion is clarified with respect to projects that replace, renovate, or improve facilities. The exclusion for oil spill costs is slightly narrowed to exempt a spill confined to a gravel pad.
5. The 50,000 barrel a day phase-out provision for the sec. 170 tax credit in sec. 25 of the bill is eliminated, so that all producers qualify equally for the same credit.
6. A new section is added to the bill on the relationship of the production tax statute to the Alaska Stranded Gas Development Act. This section affirms that the production tax and oil conservation surcharges will not apply to oil or gas for which a producer is obligated to make payments in lieu of taxes and surcharges (including gas delivered in kind) under a stranded gas contract.
7. The starting date for the new production tax provisions is changed from April 1 to July 1, 2006.

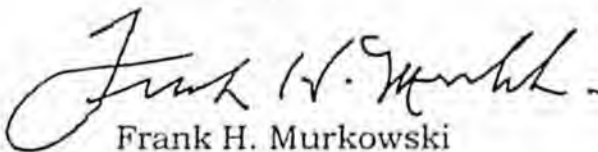
The 20 percent tax credit for qualified investments and for annual losses remain the same. The credits could not be used to reduce a taxpayer's liability below zero. A credit not used in a given period may still either be carried forward or sold to another taxpayer who might better be able to use it. The transitional investment expenditure provisions also are unchanged from the House-passed bill.

As explained more fully in my transmittal letter accompanying the original Administration bills, this bill will greatly improve Alaska's oil and gas tax system, encouraging investment in the state, making tax administration more predictable, and better reflecting the variable economics of oil and gas

The Honorable Ben Stevens  
May 20, 2006  
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development. This bill will provide Alaskans with a fairer share of the value of the oil and gas taken out of the ground in our state and provide fiscal certainty for future generations of Alaskans. I urge your prompt and favorable action on the bill.

Sincerely,

A handwritten signature in cursive script, reading "Frank H. Murkowski". The signature is written in dark ink and is positioned above the printed name and title.

Frank H. Murkowski  
Governor

Enclosure