

**SB**

**20001**

**(FILE 4)**

**MEMOS &**

**SECTIONALS**

# LEGAL SERVICES

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## MEMORANDUM

October 25, 2007

**SUBJECT:** Draft CSSB 2001( ) (Work Order No. 25-GS0014C)

**TO:** Senator Charlie Huggins  
Chair of the Senate Resources Committee  
Attn: Sharon Long

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

Enclosed is a draft committee substitute for SB 2001. Please read this draft carefully to ensure that it is consistent with the committee's intent.

This version includes the provisions you received from the draft house bill you have, plus other provisions that authorize the Department of Revenue to gather information that may be helpful for determining the correct amount of taxes due under AS 43.55 and for making revenue forecasts. The draft also contains the provision that makes oil and gas auditors exempt employees. Except for the amendment to AS 43.55.023(i) in sec. 13, the bill does not change a provision in existing law that relates to the calculation of the tax under PPT. The thrust is this CS is to help determine the proper tax under the current PPT.

Also, note that sec. 15 provides for a \$1,000 a day penalty for failing to timely file a report with the Department of Revenue under AS 43.55.030(a), and a similar penalty for other reports or information the department requires under AS 43.55.040, as amended in sec. 17 of the bill.

In sec. 13 of the bill, I used the language you provided from Rob Mintz in amending AS 43.55.023(i). Although his language repealed and reenacted that subsection, this draft amends the subsection instead, as the changes were not that extensive.

If I may be of further assistance, please advise.

DMB:ljw  
07-383.ljw

Enclosure

25-GS0014\C  
Bullock  
10/25/07

**CS FOR SENATE BILL NO. 2001( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**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 the sharing between agencies of certain information relating to the**  
3 **production tax and to oil and gas or gas only leases; amending the State Personnel Act**  
4 **to place in the exempt service certain state oil and gas auditors and their immediate**  
5 **supervisors; making conforming amendments; and providing for an effective date."**

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

7 **\* Section 1. AS 38.05.035(a) is amended to read:**

8 (a) The director shall

9 (1) have general charge and supervision of the division and may  
10 exercise the powers specifically delegated to the director; the director may employ  
11 and fix the compensation of assistants and employees necessary for the operations of  
12 the division; the director [AND] is the certifying officer of the division, with the  
13 consent of the commissioner, and may approve vouchers for disbursements of money

1 appropriated to the division;

2 (2) manage, inspect, and control state land and improvements on it  
3 belonging to the state and under the jurisdiction of the division;

4 (3) execute laws, rules, regulations, and orders adopted by the  
5 commissioner;

6 (4) prescribe application procedures and practices for the sale, lease,  
7 or other disposition of available land, resources, property, or interest in them;

8 (5) prescribe fees or service charges, with the consent of the  
9 commissioner, for any public service rendered;

10 (6) under the conditions and limitations imposed by law and the  
11 commissioner, issue deeds, leases, or other conveyances disposing of available land,  
12 resources, property, or any interests in them;

13 (7) have jurisdiction over state land, except that land acquired by the  
14 Alaska World War II Veterans Board and the Agricultural Loan Board or the  
15 departments or agencies succeeding to their respective functions through foreclosure  
16 or default; to this end, the director possesses the powers and, with the approval of the  
17 commissioner, shall perform the duties necessary to protect the state's rights and  
18 interest in state land, including the taking of all necessary action to protect and  
19 enforce the state's contractual or other property rights;

20 (8) [REPEALED

21 (9)] maintain the [SUCH] records [AS] the commissioner considers  
22 necessary, administer oaths, and do all things incidental to the authority imposed; the  
23 following records and files shall be kept confidential upon request of the person  
24 supplying the information:

25 (A) the name of the person nominating or applying for the  
26 sale, lease, or other disposal of land by competitive bidding;

27 (B) before the announced time of opening, the names of the  
28 bidders and the amounts of the bids;

29 (C) all geological, geophysical, and engineering data supplied,  
30 whether or not concerned with the extraction or development of natural  
31 resources;

1 (D) except as provided in AS 38.05.036, cost data and  
2 financial information submitted in support of applications, bonds, leases, and  
3 similar items;

4 (E) applications for rights-of-way or easements;

5 (F) requests for information or applications by public agencies  
6 for land that [WHICH] is being considered for use for a public purpose;

7 (9) [(10)] account for the fees, licenses, taxes, or other money  
8 received in the administration of this chapter including the sale or leasing of land,  
9 identify their source, and promptly transmit them to the proper fiscal department after  
10 crediting them to the proper fund; receipts from land application filing fees and  
11 charges for copies of maps and records shall be deposited immediately in the general  
12 fund of the state by the director;

13 (10) [(11)] select and employ or obtain at reasonable compensation  
14 cadastral, appraisal, or other professional personnel the director considers necessary  
15 for the proper operation of the division;

16 (11) [(12)] be the certifying agent of the state to select, accept, and  
17 secure by whatever action is necessary in the name of the state, by deed, sale, gift,  
18 devise, judgment, operation of law, or other means any land, of whatever nature or  
19 interest, available to the state; and be the certifying agent of the state, to select,  
20 accept, or secure by whatever action is necessary in the name of the state any land, or  
21 title or interest to land available, granted, or subject to being transferred to the state  
22 for any purpose;

23 (12) on request, furnish records, files, and other information  
24 related to the administration of AS 38.05.180 to the Department of Revenue for  
25 use in forecasting state revenue under or administering AS 43.55, whether or not  
26 those records, files, and other information are required to be kept confidential  
27 under (8) of this subsection; in the case of records, files, or other information  
28 required to be kept confidential under (8) of this subsection, the Department of  
29 Revenue shall maintain the confidentiality that the Department of Natural  
30 Resources is required to extend to records, files, and other information under (8)  
31 of this subsection

1 [(13) REPEALED

2 (14) REPEALED].

3 \* Sec. 2. AS 38.05.036(b) is amended to read:

4 (b) The Department of Revenue may obtain from the department information  
5 relating to royalty and net profits payments and to exploration incentive credits under  
6 this chapter or under AS 41.09, whether or not that information is confidential. The  
7 Department of Revenue may use the information in carrying out its functions and  
8 responsibilities under AS 43, and shall hold that information confidential to the extent  
9 required by an agreement with the department or by AS 38.05.035(a)(8)  
10 [AS 38.05.035(a)(9)], AS 41.09.010(d), or AS 43.05.230.

11 \* Sec. 3. AS 38.05.036(f) is amended to read:

12 (f) Except as otherwise provided in this section or in connection with official  
13 investigations or proceedings of the department, it is unlawful for a current or former  
14 officer, employee, or agent of the state to divulge information obtained by the  
15 department as a result of an audit under this section that is required by an agreement  
16 with the department or by AS 38.05.035(a)(8) [AS 38.05.035(a)(9)] or  
17 AS 41.09.010(d) to be kept confidential.

18 \* Sec. 4. AS 38.05.036(g) is amended to read:

19 (g) Nothing in this section prohibits the publication of statistics in a manner  
20 that maintains the confidentiality of information to the extent required by an  
21 agreement with the department or by AS 38.05.035(a)(8) [AS 38.05.035(a)(9)] or  
22 AS 41.09.010(d).

23 \* Sec. 5. AS 38.05.123(f) is amended to read:

24 (f) As part of the timber sale negotiations authorized by this section, the  
25 commissioner may require a prospective purchaser negotiating a timber sale contract  
26 to submit financial and technical data that demonstrates that the requirements of this  
27 section have been or will be met. Upon the prospective purchaser's request, the  
28 commissioner shall keep data provided by the purchaser confidential in accordance  
29 with the requirements of AS 38.05.035(a)(8) [AS 38.05.035(a)(9)].

30 \* Sec. 6. AS 38.05.133(e) is amended to read:

31 (e) The commissioner may make a written request to a prospective licensee

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for additional information on the prospective licensee's proposal. The commissioner shall keep confidential information described in AS 38.05.035(a)(8) [AS 38.05.035(a)(9)] that is voluntarily provided if the prospective licensee has made a written request that the information remain confidential.

\* Sec. 7. AS 38.05.180(j) is amended to read:

(j) The commissioner

(1) may provide for modification of royalty on individual leases, leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05

(A) to allow for production from an oil or gas field or pool if

(i) the oil or gas field or pool has been sufficiently delineated to the satisfaction of the commissioner;

(ii) the field or pool has not previously produced oil or gas for sale; and

(iii) oil or gas production from the field or pool would not otherwise be economically feasible;

(B) to prolong the economic life of an oil or gas field or pool as per barrel or barrel equivalent costs increase or as the price of oil or gas decreases, and the increase or decrease is sufficient to make future production no longer economically feasible; or

(C) to reestablish production of shut-in oil or gas that would not otherwise be economically feasible;

(2) may not grant a royalty modification unless the lessee or lessees requesting the change make a clear and convincing showing that a modification of royalty meets the requirements of this subsection and is in the best interests of the state;

(3) shall provide for an increase or decrease or other modification of the state's royalty share by a sliding scale royalty or other mechanism that shall be based on a change in the price of oil or gas and may also be based on other relevant factors such as a change in production rate, projected ultimate recovery, development costs, and operating costs;

1 (4) may not grant a royalty reduction for a field or pool

2 (A) under (1)(A) of this subsection if the royalty modification  
3 for the field or pool would establish a royalty rate of less than five percent in  
4 amount or value of the production removed or sold from a lease or leases  
5 covering the field or pool;

6 (B) under (1)(B) or (1)(C) of this subsection if the royalty  
7 modification for the field or pool would establish a royalty rate of less than  
8 three percent in amount or value of the production removed or sold from a  
9 lease or leases covering the field or pool;

10 (5) may not grant a royalty reduction under this subsection without  
11 including an explicit condition that the royalty reduction is not assignable without the  
12 prior written approval, which may not be unreasonably withheld, by the  
13 commissioner; the commissioner shall, in the preliminary and final findings and  
14 determinations, set out the conditions under which the royalty reduction may be  
15 assigned;

16 (6) shall require the lessee or lessees to submit, with the application  
17 for the royalty reduction, financial and technical data that demonstrate that the  
18 requirements of this subsection are met; the commissioner

19 (A) may require disclosure of only the financial and technical  
20 data related to development, production, and transportation of oil and gas or  
21 gas only from the field or pool that are reasonably available to the applicant;  
22 and

23 (B) shall keep the data confidential under AS 38.05.035(a)(8)  
24 [AS 38.05.035(a)(9)] at the request of the lessee or lessees making application  
25 for the royalty reduction; the confidential data may be disclosed by the  
26 commissioner to legislators and to the legislative auditor and as directed by  
27 the chair or vice-chair of the Legislative Budget and Audit Committee to the  
28 director of the division of legislative finance, the permanent employees of  
29 their respective divisions who are responsible for evaluating a royalty  
30 reduction, and to agents or contractors of the legislative auditor or the  
31 legislative finance director who are engaged under contract to evaluate the

1 royalty reduction, if they sign an appropriate confidentiality agreement;

2 (7) may

3 (A) require the lessee or lessees making application for the  
4 royalty reduction under (1)(A) of this subsection to pay for the services of an  
5 independent contractor, selected by the lessee or lessees from a list of  
6 qualified consultants compiled by the commissioner, to evaluate hydrocarbon  
7 development, production, transportation, and economics and to assist the  
8 commissioner in evaluating the application and financial and technical data;  
9 if, under this subparagraph, the commissioner requires payment for the  
10 services of an independent contractor, the total cost of the services to be paid  
11 for by the lessee or lessees may not exceed \$150,000 for each application, and  
12 the commissioner shall determine the relevant scope of the work to be  
13 performed by the contractor; selection of an independent contractor under this  
14 subparagraph is not subject to AS 36.30;

15 (B) with the mutual consent of the lessee or lessees making  
16 application for the royalty reduction under (1)(B) or (1)(C) of this subsection,  
17 request payment for the services of an independent contractor, selected from a  
18 list of qualified consultants to evaluate hydrocarbon development, production,  
19 transportation, and economics by the commissioner to assist the commissioner  
20 in evaluating the application and financial and technical data; if, under this  
21 subparagraph, the commissioner requires payment for the services of an  
22 independent contractor, the total cost of the services that may be paid for by  
23 the lessee or lessees may not exceed \$150,000 for each application, and the  
24 commissioner shall determine the relevant scope of the work to be performed  
25 by the contractor; selection of an independent contractor under this  
26 subparagraph is not subject to AS 36.30;

27 (8) shall make and publish a preliminary findings and determination  
28 on the royalty reduction application, give reasonable public notice of the preliminary  
29 findings and determination, and invite public comment on the preliminary findings  
30 and determination during a 30-day period for receipt of public comment;

31 (9) shall offer to appear before the Legislative Budget and Audit

1 Committee, on a day that is not earlier than 10 days and not later than 20 days after  
2 giving public notice under (8) of this subsection, to provide the committee a review of  
3 the commissioner's preliminary findings and determination on the royalty reduction  
4 application and administrative process; if the Legislative Budget and Audit  
5 Committee accepts the commissioner's offer, the committee shall give notice of the  
6 committee's meeting to all members of the legislature;

7 (10) shall make copies of the preliminary findings and determination  
8 available to

9 (A) the presiding officer of each house of the legislature;

10 (B) the chairs of the legislature's standing committees on  
11 resources; and

12 (C) the chairs of the legislature's special committees on oil and  
13 gas, if any;

14 (11) shall, within 30 days after the close of the public comment period  
15 under (8) of this subsection,

16 (A) prepare a summary of the public response to the  
17 commissioner's preliminary findings and determination;

18 (B) make a final findings and determination; the  
19 commissioner's final findings and determination prepared under this  
20 subparagraph regarding a royalty reduction is final and not appealable to the  
21 court;

22 (C) transmit a copy of the final findings and determination to  
23 the lessee;

24 (D) with the applicant's consent, amend the applicant's lease or  
25 unitization agreement consistent with the commissioner's final decision; and

26 (E) make copies of the final findings and determination  
27 available to each person who submitted comment under (8) of this subsection  
28 and who has filed a request for the copies;

29 (12) is not limited by the provisions of AS 38.05.134(3) or (f) of this  
30 section in the commissioner's determination under this subsection.

31 \* Sec. 8. AS 38.05.275(c) is amended to read:

1 (c) Subsection (b) of this section may not be construed to limit the director in  
2 the exercise of authority granted by AS 38.05.035(a)(11) [AS 38.05.035(a)(12)].

3 \* Sec. 9. AS 39.25.110 is amended by adding a new paragraph to read:

4 (42) oil and gas auditors performing

5 (A) production tax audits, and their immediate supervisors, in  
6 the Department of Revenue;

7 (B) royalty audits, including net profit share audits, and their  
8 immediate supervisors, in the Department of Natural Resources.

9 \* Sec. 10. AS 41.09.010(d) is amended to read:

10 (d) Data derived from drilling a stratigraphic test well or exploratory well that  
11 is provided to the commissioner under (c)(3) of this section shall be kept confidential  
12 for 24 months after receipt by the commissioner unless the owner of the well gives  
13 written permission to the state to release the well data at an earlier date, and,  
14 notwithstanding AS 31.05.035(c), confidentiality may not be extended beyond 24  
15 months. The provisions of AS 38.05.035(a)(8)(C) [AS 38.05.035(a)(9)(C)] apply to  
16 other data provided to the commissioner under (c)(3) of this section, except that the  
17 commissioner, under appropriate confidentiality provisions and without preference or  
18 discrimination, may display to all interested third parties, but may not distribute or  
19 transfer in hard copy or electronic form, those data with respect to all land if the  
20 commissioner determines that the limited disclosure is necessary to further the  
21 interest of the state in evaluating or developing its land.

22 \* Sec. 11. AS 43.05.230(a) is amended to read:

23 (a) It is unlawful for a current or former officer, employee, or agent of the  
24 state to divulge the amount of income or the particulars set out or disclosed in a report  
25 or return made under this title, except

26 (1) in connection with official investigations or proceedings of the  
27 department, whether judicial or administrative, involving taxes due under this title;

28 (2) in connection with official investigations or proceedings of the  
29 child support enforcement agency, whether judicial or administrative, involving child  
30 support obligations imposed or imposable under AS 25 or AS 47;

31 (3) as provided in AS 38.05.036 pertaining to audit functions of the

1 Department of Natural Resources;

2 (4) as provided in AS 43.05.405 - 43.05.499; and

3 (5) as otherwise provided in this section or AS 43.55.890.

4 \* Sec. 12. AS 43.05.230(h) is amended to read:

5 (h) The commissioner shall, upon request, furnish to the Department of  
6 Natural Resources copies of tax returns, reports, and other documents filed under  
7 AS 43.55 or AS 43.65, and the Department of Revenue's determinations and  
8 workpapers under those chapters. The Department of Natural Resources shall  
9 maintain the confidentiality that the Department of Revenue is required to extend to  
10 the returns, reports, documents, determinations, and workpapers furnished to the  
11 Department of Natural Resources under this subsection.

12 \* Sec. 13. AS 43.55.023(i) is amended to read:

13 (i) For the purposes of this section,

14 (1) a producer's or explorer's transitional investment expenditures are  
15 the sum of the expenditures the producer or explorer incurred after March 31, 2001,  
16 and before April 1, 2006, that would be qualified capital expenditures if they were  
17 incurred after March 31, 2006, less the sum of the payments or credits the producer or  
18 explorer received before April 1, 2006, for the sale or other transfer of assets,  
19 including geological, geophysical, or well data or interpretations, acquired by the  
20 producer or explorer as a result of expenditures the producer or explorer incurred  
21 before April 1, 2006, that would be qualified capital expenditures, if they were  
22 incurred after March 31, 2006;

23 (2) a producer or explorer that did not have commercial production  
24 of oil or gas from a lease or property in the state before January 1, 2008, may  
25 elect to take a tax credit against a tax levied by [DUE UNDER] AS 43.55.011(e) in  
26 the amount of 20 percent of the producer's or explorer's transitional investment  
27 expenditures, but only to the extent that the amount does not exceed 1/10 of the  
28 producer's or explorer's qualified capital expenditures that were incurred after  
29 March 31, 2006, and before January 1, 2008 [ARE INCURRED DURING THE  
30 CALENDAR YEAR FOR WHICH THE CREDIT IS TAKEN];

31 (3) a producer or explorer may not take a tax credit for a transitional

1 investment expenditure

2 (A) for any calendar year after [THE LATER OF

3 (i)] 2013; [OR

4 (ii) THE SIXTH CALENDAR YEAR AFTER THE  
5 CALENDAR YEAR FOR WHICH THE PRODUCER FIRST  
6 APPLIES A CREDIT UNDER THIS SUBSECTION AGAINST A  
7 TAX DUE UNDER AS 43.55.011(e), IF THE PRODUCER DID NOT  
8 HAVE COMMERCIAL PRODUCTION OF OIL OR GAS FROM A  
9 LEASE OR PROPERTY IN THE STATE BEFORE APRIL 1, 2006;]

10 (B) more than once; or

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

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

16 \* Sec. 14. AS 43.55.030(a) is amended to read:

17 (a) A producer that produces oil or gas from a lease or property in the  
18 state during a calendar year, whether or not any tax payment is due under  
19 AS 43.55.020(a) for that oil or gas. [THE PERSON PAYING THE TAX] shall file  
20 with the department on March 31 of the following year [FOLLOWING THE  
21 CALENDAR YEAR FOR WHICH THE TAX WAS LEVIED] a statement, under  
22 oath, in a form prescribed by the department, giving, with other information required,  
23 the following:

24 (1) a description of each lease or property from which [THE] oil or  
25 [AND] gas was [WERE] produced, by name, legal description, lease number, or  
26 accounting codes assigned by the department;

27 (2) the names of the producer and, if different, the person paying the  
28 tax, if any;

29 (3) the gross amount of oil and the gross amount of gas produced from  
30 each lease or property, and the percentage of the gross amount of oil and gas owned  
31 by the [EACH] producer [FOR WHOM THE TAX IS PAID];

1 (4) the gross value at the point of production of the oil and of the gas  
2 produced from each lease or property owned by the [EACH] producer and the costs  
3 of transportation of the oil and gas [FOR WHOM THE TAX IS PAID];

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

7 (6) the producer's qualified capital expenditures, as defined in  
8 AS 43.55.023. other lease expenditures [AND ADJUSTMENTS AS  
9 CALCULATED] under AS 43.55.165, and adjustments or other payments or  
10 credits under AS 43.55.170;

11 (7) the production tax values of the oil and gas under  
12 AS 43.55.160;

13 (8) any claims for tax credits to be applied; and

14 (9) calculations showing the ar junts, if any, that were or are due  
15 under AS 43.55.020(a) and interest on any underpayment or overpayment  
16 [AS 43.55.160 - 43.55.170].

17 \* Sec. 15. AS 43.55.030(d) is amended to read:

18 (d) Reports required under this section [BY OR ON BEHALF OF THE  
19 PRODUCER] are delinquent the first day following the day the report is due. The  
20 person required to file the report is liable for a penalty, as determined by the  
21 department under standards adopted in regulation by the department, of not  
22 more than \$1.000 for each day the person fails to file the report at the time  
23 required. The penalty is in addition to the penalties in AS 43.05.220 and  
24 43.05.290 and is assessed, collected, and paid in the same manner as a tax  
25 deficiency under this title. In this subsection, "report" includes a statement.

26 \* Sec. 16. AS 43.55.030 is amended by adding new subsections to read:

27 (e) An explorer or producer that incurs a lease expenditure under  
28 AS 43.55.165 or receives a payment or credit under AS 43.55.170 during a calendar  
29 year but does not produce oil or gas from a lease or property in the state during the  
30 calendar year shall file with the department on March 31 of the following year a  
31 statement, under oath, in a form prescribed by the department, giving, with other

1 information required, the following:

2 (1) the producer's qualified capital expenditures, as defined in  
3 AS 43.55.023, other lease expenditures under AS 43.55.165, and adjustments or other  
4 payments or credits under AS 43.55.170; and

5 (2) if the explorer or producer receives a payment or credit under  
6 AS 43.55.170, calculations showing whether the explorer or producer is liable for a  
7 tax under AS 43.55.160(d) or 43.55.170(b) and, if so, the amount.

8 (f) The department may require a producer, an explorer, or an operator of a  
9 lease or property to file monthly reports, as applicable, of

10 (1) the amounts and gross value at the point of production of oil and  
11 gas produced:

12 (2) transportation costs of the oil and gas;

13 (3) any unscheduled interruption of, or reduction in the rate of, oil or  
14 gas production;

15 (4) lease expenditures and adjustments under AS 43.55.165 and  
16 43.55.170;

17 (5) joint interest billings;

18 (6) contracts for the sale or transportation of oil or gas;

19 (7) information and calculations used in determining monthly  
20 installment payments of estimated tax under AS 43.55.020(a); and

21 (8) other records and information the department considers necessary  
22 for the administration of this chapter.

23 \* Sec. 17. AS 43.55.040 is amended to read:

24 **Sec. 43.55.040. Powers of Department of Revenue.** Except as provided in  
25 AS 43.05.405 - 43.05.499, the department may

26 (1) require a person engaged in production and the agent or employee  
27 of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil  
28 or gas to furnish, whether by the filing of regular statements or reports or otherwise,  
29 additional information that is considered by the department as necessary to compute  
30 the amount of the tax; notwithstanding any contrary provision of law, the disclosure  
31 of additional information under this paragraph to the producer obligated to pay the tax

1 does not violate AS 40.25.100(a) or AS 43.05.230(a); before disclosing information  
2 under this paragraph that is otherwise required to be held confidential under  
3 AS 40.25.100(a) or AS 43.05.230(a), the department shall

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

7 (B) impose appropriate conditions limiting

8 (i) access to the information to those legal counsel,  
9 consultants, employees, officers, and agents of the producer who have  
10 a need to know that information for the purpose of determining or  
11 contesting the producer's tax obligation; and

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

13 (2) examine the books, records, and files of ~~the~~ [SUCH A] person;

14 (3) conduct hearings and compel the attendance of witnesses and the  
15 production of books, records, and papers of any person; [AND]

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

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

20 (B) the rendition of the oil and gas for taxing purposes;

21 (5) require a producer, an explorer, or an operator of a lease or  
22 property to file reports and copies of records that the department considers  
23 necessary to forecast state revenue under this chapter; in the case of reports and  
24 copies of records relating to proposed, expected, or approved unit expenditures  
25 for a unit for which one or more working interest owners other than the  
26 operator have authority to approve unit expenditures, the required reports and  
27 copies of records are limited to those reports or copies of records that constitute  
28 or disclose communications between the operator and the working interest  
29 owners relating to unit budget matters; and

30 (6) assess against a person required under this section to file a  
31 report, statement, or other document a penalty, as determined by the

1 department under standards adopted in regulation by the department, of not  
2 more than \$1,000 for each day the person fails to file the report, statement, or  
3 other document at the time required; the penalty is in addition to the penalties in  
4 AS 43.05.220 and 43.05.290 and is assessed, collected, and paid in the same  
5 manner as a tax deficiency under this title.

6 \* Sec. 18. AS 43.55.110 is amended by adding new subsections to read:

7 (e) The department may require that returns, statements, reports, notifications,  
8 and applications filed under this chapter be filed electronically in a form and manner  
9 approved or prescribed by the department.

10 (f) The department may require that payments required under this chapter be  
11 made electronically in a form and manner approved or prescribed by the department.

12 (g) Notwithstanding AS 44.62, the department may issue, for the information  
13 and guidance of producers, explorers, and other interested persons, advisory bulletins  
14 stating the department's interpretation of provisions of this chapter and of regulations  
15 adopted under this chapter. Unless otherwise provided by the department by  
16 regulation, interpretations stated in the advisory bulletins are not binding on the  
17 department or others.

18 \* Sec. 19. AS 43.55 is amended by adding a new section to article 4 to read:

19 **Sec. 43.55.890. Disclosure of tax information.** Notwithstanding any contrary  
20 provision of AS 40.25.100, and regardless of whether the information is considered  
21 under AS 43.05.230(e) to constitute statistics classified to prevent the identification of  
22 particular returns or reports, the department may publish the following information  
23 under this chapter, if aggregated among three or more producers or explorers,  
24 showing by month or calendar year and by lease or property, unit, or area of the state:

25 (1) the amount of oil or gas production;

26 (2) the amount of taxes levied under this chapter or paid under this  
27 chapter;

28 (3) the effective tax rates under this chapter;

29 (4) the gross value of oil or gas at the point of production;

30 (5) the transportation costs for oil or gas;

31 (6) qualified capital expenditures under AS 43.55.023(k);

- 1 (7) exploration expenditures under AS 43.55.025;  
2 (8) production tax values of oil or gas under AS 43.55.160;  
3 (9) lease expenditures under AS 43.55.165;  
4 (10) adjustments to lease expenditures under AS 43.55.170;  
5 (11) tax credits applicable or potentially applicable against taxes  
6 levied by this chapter.

7 \* Sec. 20. AS 43.55.900 is amended by adding new paragraphs to read:

8 (22) "producer" means an owner of an operating right, operating  
9 interest, or working interest in a mineral interest in oil or gas;

10 (23) "unit" means a group of tracts of land that is

11 (A) subject to a cooperative or a unit plan of development or  
12 operation that has been certified by the commissioner of natural resources  
13 under AS 38.05.180(p);

14 (B) subject to a cooperative or a unit plan of development or  
15 operation that has been certified by the United States Secretary of the Interior  
16 under 30 U.S.C. 226(m);

17 (C) subject to an agreement of the owners of interests in the  
18 tracts of land to validly integrate their interests to provide for the unitized  
19 management, development, and operation of the tracts of land as a unit, within  
20 the meaning of AS 31.05.110(a); or

21 (D) within the unit area of a unit created by order of the  
22 Alaska Oil and Gas Conservation Commission under AS 31.05.110(b).

23 \* Sec. 21. AS 43.55.011(l) is repealed.

24 \* Sec. 22. The uncodified law of the State of Alaska is amended by adding a new section to  
25 read:

26 APPLICABILITY. (a) Section 21 of this Act applies to oil and gas produced after  
27 December 31, 2007.

28 (b) Sections 14 and 16 of this Act apply to statements and reports under  
29 AS 43.55.030(a), as amended by sec. 14 of this Act, and AS 43.55.030(e) and (f), as added  
30 by sec. 16 of this Act, required to be filed after December 31, 2007.

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

1 read:

2 TRANSITION: ASSIGNMENT OF OIL AND GAS AUDITORS IN THE  
3 DEPARTMENT OF REVENUE AND DEPARTMENT OF NATURAL RESOURCES.

4 Notwithstanding any contrary provision of law, employees employed as oil and gas auditors  
5 performing production tax audits or as their immediate supervisors in the Department of  
6 Revenue and employees employed as oil and gas auditors performing royalty audits,  
7 including net profit share audits, or as their immediate supervisors in the Department of  
8 Natural Resources are assigned to the exempt service in accordance with AS 39.25.110(42),  
9 added by sec. 9 of this Act, and may not be included in the general government or  
10 supervisory collective bargaining units of state employees except as provided in this section.

11 All oil and gas auditors performing production tax audits or royalty audits and their  
12 immediate supervisors hired before the effective date of sec. 9 of this Act have the option of  
13 (1) continuing in the general government or supervisory collective bargaining units and being  
14 subject to their respective collective bargaining agreements; or (2) being removed from those  
15 bargaining units. Those employees have 90 days from the effective date of sec. 9 of this Act  
16 to exercise the option to continue in the collective bargaining units. The option taken under  
17 this section by the employee is irrevocable. The employees choosing to be removed from  
18 those bargaining units are removed after any notice period required by a collective  
19 bargaining agreement.

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

22 TRANSITION: RETROACTIVITY OF REGULATIONS. Notwithstanding any  
23 contrary provision of AS 44.62.240,

24 (1) if the Department of Revenue expressly designates in the regulation that  
25 the regulation applies retroactively to that date, a regulation adopted by the Department of  
26 Revenue to implement, interpret, make specific, or otherwise carry out secs. 13, 14, 16, and  
27 21 of this Act may apply retroactively to January 1, 2008;

28 (2) a regulation adopted by the Department of Natural Resources to  
29 implement, interpret, make specific, or otherwise carry out statutory provisions for the  
30 administration of oil and gas leases issued under AS 38.05.180(f)(3)(B), (D), or (E), to the  
31 extent the regulation deals with the treatment of oil and gas production taxes in determining

1 net profits under those leases, may apply retroactively to April 1, 2006, if the Department of  
2 Natural Resources expressly designates in the regulation that the regulation applies  
3 retroactively to that date.

4 \* Sec. 25. The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

6 TRANSITION: REGULATIONS. The Department of Natural Resources and the  
7 Department of Revenue may proceed to adopt regulations to implement this Act. The  
8 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
9 effective date of the law implemented by the regulation.

10 \* Sec. 26. Sections 13, 14, 16, and 21 of this Act take effect January 1, 2008.

11 \* Sec. 27. Except as provided in sec. 26 of this Act, this Act takes effect immediately under  
12 AS 01.10.070(c).

## LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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### MEMORANDUM

October 18, 2007

**SUBJECT:** Sectional summary of the governor's production tax bill based on the version received October 17, 2007  
(Work Order No. 25-GH0014\A and 25-GS0014\A)

**TO:** File

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

The following is a sectional analysis of the draft of the governor's bill amending AS 43.55 and making additional changes related to the administration of the oil and gas production tax and surcharges.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** States that the enactment of AS 43.55.075(b) in sec. 50 of the bill is to "confirm by clarification the long-standing interpretation of AS 43.05.260 by the [department]." (AS 43.05.260 relates to the limitation on assessment for taxes imposed by AS 43.)

**Section 2.** Amends AS 38.05.035(a) by adding a new paragraph that requires the director of the division of lands to furnish records, files, and other information related to the administration of AS 38.05.180 (oil and gas and gas only leasing) to the Department of Revenue for use in forecasting state revenue and the administration of AS 43.55 (oil and gas production tax and surcharges). In the case of information required to be held confidential under AS 38.05.035(a)(8), the Department of Revenue is to maintain the same level of confidentiality of the information as is required of the director of the division of lands.

**Section 3.** Amends AS 38.05.036(b) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

File

October 18, 2007

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**Section 4.** Amends AS 38.05.036(f) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 5.** Amends AS 38.05.036(g) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 6.** Amends AS 38.05.123(f) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 7.** Amends AS 38.05.135(e) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 8.** Amends AS 38.05.180(j) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 9.** Amends AS 38.05.275(c) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 10.** Adds a new paragraph to AS 39.25.110 that makes oil and gas production tax auditors and their immediate supervisors in the Department of Revenue, and oil and gas royalty auditors and their immediate supervisors in the Department of Natural Resources exempt employees.

**Section 11.** Amends AS 41.09.010(d) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 12.** Amends AS 43.05.230(a) to include AS 43.55.890 (added by sec. 61 of the bill) as authority for divulging the amount of income or the particulars set out or disclosed in a report or return made under AS 43, notwithstanding the general prohibition in AS 43.05.230.

**Section 13.** Amends AS 43.05.230(h) by adding tax returns, reports, and documents filed under AS 43.55 and the Department of Revenue's determinations and workpapers under AS 43.55 and AS 43.65 to the information that the Department of Revenue is required to furnish to the Department of Natural Resources.

**Section 14.** Amends AS 43.05.260(a) to include AS 43.55.075 (added by sec. 50 of the bill) as an exception to the general three-year statute of limitation on assessment.

**Section 15.** Repeals and reenacts AS 43.55.011(e); the reenactment changes levy from a monthly to a calendar year basis; with certain exceptions, provides that the tax is equal to the production tax value of the taxable oil and gas multiplied by the percentage determined under AS 43.55.011(g) (subsection (g) is repealed and reenacted by sec. 17 of the bill). Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 16.** Repeals and reenacts AS 43.55.011(f); the repeal and reenactment creates a new floor for the tax imposed on production from a unit or non-unitized reservoir from which 1,000,000,000 BTU equivalent barrels of oil or gas have been cumulatively produced before the start of the tax year and from which the average daily oil and gas production during the most recent calendar year exceeded 100,000 BTU equivalent barrels a day (so-called "legacy fields"); provides that tax credits may not be used to reduce the tax liability for these leases or properties below 10 percent of the total gross value at the point of production; provides that the effective tax rate under AS 43.55.011(e) may not be less than 10 percent of the total gross value at the point of production. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 17.** Repeals and reenacts AS 43.55.011(g); provides that the tax rate applicable to the tax value of oil and gas production is the sum of 25 percent plus the product of 0.20 percent (.002) times the price index determined under AS 43.55.011(h) (subsection (h) is amended in sec. 18 of the bill); limits the tax to a maximum rate of 50 percent. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 18.** Amends AS 43.55.011(h) to make the price index determined on a calendar year rather than a monthly basis, and to increase the nominal 25 percent tax when the average production tax value for all leases or properties in the state for the calendar year exceeds \$30. Provides that the price index may not be less than zero.<sup>1</sup> Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 19.** Amends AS 43.55.011(j) (relating to Cook Inlet gas) to eliminate a reference to AS 43.55.011(g); the reference to AS 43.55.011(g) is no longer applicable with the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill and the repeal and reenactment of AS 43.55.011(g) in sec. 17 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

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<sup>1</sup> For example, if the average production tax value is \$35 a BTU equivalent barrel, the tax rate is 26%. This is determined by starting with the 25% base rate in AS 43.55.011(g) and adding the product of 0.2% multiplied by 5, with "5" representing the difference between 30 and the average production tax value a BTU equivalent barrel.

**Section 20.** Amends AS 43.55.011(k) (relating to Cook Inlet oil) to eliminate a reference to AS 43.55.011(g); the reference to AS 43.55.011(g) is no longer applicable with the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill and the repeal and reenactment of AS 43.55.011(g) in sec. 17 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 21.** Amends AS 43.55.011(m) by adding new limitations for excess tax credits associated with Cook Inlet gas production based on new subsections added to AS 43.55.160 by sec. 55 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 22.** Repeals and reenacts AS 43.55.020(a); provides the methods for determining the amount of monthly installment payments for the tax imposed on leases or properties outside of Cook Inlet excluding fields subject to tax under AS 43.55.011(f) (legacy fields), on leases or properties subject to AS 43.55.011(f), and on leases or properties in Cook Inlet; provides a limit on the amount of the installment payment for oil and gas produced in Cook Inlet; provides the method for determining the amount of the installment payment for the tax imposed on the production of taxable royalty oil and gas; and provides that any tax remaining due after the payment of the installment payments is due on March 31 of the year following the calendar year of production. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 23.** Amends AS 43.55.020(d) by changing a reference to the statute under which the tax is levied to conform with the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 24.** Amends AS 43.55.020(g) by changing references to paragraphs in AS 43.55.020(a) to conform to the repeal and reenactment of AS 43.55.020(a) in sec. 22 of the bill; clarifies the period during which interest accrues under 26 U.S.C. 6621 on the underpayment of an installment. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 25.** Amends AS 43.55.020(h) by changing references to paragraphs in AS 43.55.020(a) to conform to the repeal and reenactment of AS 43.55.020(a) in sec. 22 of the bill; clarifies the period during which interest accrues under 26 U.S.C. 6621 on the overpayment of an installment. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 26.** Amends AS 43.55.023(a) to require that no more than one-half of a credit for a qualified capital expenditure be applied in a single calendar year; amends the requirements for

submitting information to the Department of Natural Resources as a condition of taking the credit by referencing AS 43.55.025(f)(2) (AS 43.55.025(f)(2) is amended in sec. 39 of the bill); prohibits a credit for a qualified capital expenditure for exploration, development, or production on a lease or property subject to tax under AS 43.55.011(f) (legacy fields) from being applied against a tax for oil and gas production outside of those leases or properties. (The specific reporting requirements in the existing subsection are incorporated into the amended AS 43.55.025(f) in sec. 39 of the bill.) Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 27.** AS 43.55.023(b) is amended to increase the percentage of a carried-forward annual loss that may be taken as a tax credit from 20 to 25 percent; incorporates a limitation on a carried-forward annual loss under AS 43.55.160(h) (AS 43.55.160(h) is added in sec. 55 and is applicable to Cook Inlet); prohibits the carry-forward of adjusted lease expenditures to explore, develop, or produce oil or gas deposits within a unit or non-unitized reservoir subject to AS 43.55.011(f) (legacy fields). Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 28.** Amends AS 43.55.023(d) to limit the application of the subsection by making an exception for tax credits based on certain expenditures in legacy fields (AS 43.55.023(a)(3) in sec. 26 of the bill); references the ability to obtain a cash payment for tax credits under AS 43.55.028 (AS 43.55.028 is added in sec. 45 of the bill); doubles the period for the department to grant, deny, or grant a limited credit by changing the period for acting from 60 to 120 days; amends one of the three alternative starting points (the latest is used) to start the period for departmental action on the date a statement under AS 43.55.030(a) or (e) is filed (AS 43.55.030(a) is amended in sec. 46 of the bill and AS 43.55.030(e) is added in sec. 48 of the bill); requires the department to issue two credit certificates for the credits claimed with each certificate applicable to one-half of the credit amount; provides that the tax credit shown on one of the two credit certificates may be used immediately and prohibits the application of the tax credit on the other certificate before the calendar year following the calendar year in which the certificate is issued. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 29.** Amends AS 43.55.023(e) to conform with the addition of new limitations on tax credits in AS 43.55.023(d) as amended in sec. 28 of the bill; makes a technical correction to recognize that the tax is "levied by" AS 43.55.011(e), as opposed to "due under" that subsection. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 30.** Amends AS 43.55.023(g) by adding language to reflect the authority granted in AS 43.55.028 (AS 43.55.028 is added in sec. 45 of the bill) for the department to purchase tax credits authorized under AS 43.55.023. Under sec. 66 of the bill, this section applies to (1) transferable tax credit certificates under AS 43.55.023(d), and (2) transferable tax credit certificates under AS 43.55.023(d) in effect before January 1, 2008 for which a cash refund has not been issued under AS 43.25.023(f) before January 1, 2008. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 31.** Amends AS 43.55.023 by adding a new subsection that states that an entity that is exempt from tax under AS 43.55 may not apply for a transferable tax credit certificate. Under sec. 71 of the bill, this section is retroactive to April 1, 2006.

**Section 32.** Amends AS 43.55.024(a) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 33.** Amends AS 43.55.024(c) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 34.** Amends AS 43.55.024(e) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 35.** Amends AS 43.55.024(g) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 36.** Amends AS 43.55.025(a) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill; makes a technical correction to recognize that the tax is "levied by" AS 43.55.011(e), as opposed to "due under" that subsection; removes the requirement in AS 43.55.020(a)(2) that expenditures must be for work performed before July 1, 2007. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 37.** Amends AS 43.55.025(b) by changing the start date of the period in which exploration expenditures may qualify for the tax credit under AS 43.55.025(a) from July 1, 2003 to January 1, 2008; requires that the exploration well be completed or abandoned at the time the credit is claimed by an explorer under AS 43.55.05(f) (AS 43.55.025(f) is amended in sec. 39 of the bill); excludes costs from gross negligence or violation of health, safety, or environmental statutes or regulations from eligibility for the tax credit. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 38.** Repeals and reenacts AS 43.55.025(c); requires an explorer to submit information to the commissioner of natural resources whether the geological objective of the well is a potential oil or gas trap; requires the commissioner to make the determination within a 60-day time period; requires qualifying exploration wells drilled outside of Cook Inlet to have a bottom hole not less than three miles away from the bottom hole of a preexisting oil or gas well; and requires the commissioner of natural resources to determine that the well adequately achieved the explorer's stated geological objective. The "definition of preexisting well" in current law is moved to sec. 43 of the bill where AS 43.55.025(k) is amended by adding the definition in a new paragraph. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 39.** Amends AS 43.55.025(f) by adding an exception for a credit under AS 43.55.025(l) (AS 43.55.025(l) is a new subsection added by sec. 44 of the bill) and expanding the description of information required to be furnished to the Department of Natural Resources; describes the periods during which information submitted under this subsection to the Department of Natural Resources will be held confidential; requires the Department of Revenue to issue two production tax credit certificates, each for one-half of the amount of the credit allowed against production taxes; provides that the credit associated with one certificate may be used immediately and prohibits the application of the credit associated with the second of the two certificates before the calendar year following the year in which the certificate is issued; states that some information related to the production credit is not confidential. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 40.** Amends AS 43.55.025(g) to prohibit an explorer that is exempt from the production tax from transferring, conveying, or selling a production tax credit certificate. Under sec. 71 of the bill, this section is retroactive to July 1, 2003.

**Section 41.** Amends AS 43.55.025(h) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec.

66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 42.** Repeals and reenacts AS 43.55.025(i). The reenacted provision prohibits applying a tax credit to reduce a taxpayers tax liability below zero and allows tax credits that may not be applied for a calendar year to be carried forward to later calendar years. The reenacted provision is substantively similar to existing law. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 43.** Amends AS 43.55.025(k) by adding a new paragraph that defines "preexisting well." Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 44.** Amends AS 43.55.025 by adding a new subsection -- AS 43.55.025(l) -- that relates to a claim for a production tax credit under AS 43.55.025 that is filed before January 1, 2016. Provides for a production tax credit equal to five percent of an eligible expenditure for seismic exploration performed before July 1, 2003; states the terms an expenditure must satisfy to qualify for the credit. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 45.** Adds a new section to AS 43.55 -- AS 43.55.028 -- that establishes the oil and gas tax credit fund and provides for the purchase by the department of certain transferable tax credit certificates issued under AS 43.55.023 and certain production tax certificates issued under AS 43.55.025. Money in the fund consists of earnings on the fund and appropriations to the fund out of production taxes levied under AS 43.55.011. Requires the Department of Revenue to manage the fund and to use money in the fund to purchase tax credit certificates that satisfy certain conditions. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 46.** Amends AS 43.55.030(a) to make the statement filing requirement apply to all producers rather than only those producers with a tax liability. Adds additional information requirements to those in current law. Under sec. 66 of the bill, this section applies to statements and reports required to be filed after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 47.** Amends AS 43.55.030(d) by making a person required to file a report under the section liable for a penalty of \$1,000 for each day the person fails to file the report; provides that the penalty is in addition to existing penalties in AS 43.05.220 and 43.05.290; includes a statement within the meaning of "report" in the subsection.

**Section 48.** Adds subsections (e) and (f) to AS 43.55.030. AS 43.55.030(e) requires an explorer or a producer that does not produce oil or gas during the calendar year to report the

producer's qualified capital expenditures and other lease expenditures; also requires a producer or explorer receiving a payment or credit under AS 43.55.170 to show whether a tax is due based on AS 43.55.160(d) or 43.55.170(b) and, if so, the amount of the tax. AS 43.55.030(f) authorizes the Department of Revenue to require monthly reports of information related to the determination of the amount of tax due under the chapter. Under sec. 66 of the bill, this section applies to statements and reports required to be filed after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 49.** Amends AS 43.55.040 by adding additional paragraphs that authorize the Department of Revenue to require a producer, explorer, or operator to file reports and records that the department considers necessary to forecast state revenue under AS 43.55, and authorizes a \$1,000 a day penalty against a person who fails to file a report, statement, or other document required under that section.

**Section 50.** Adds a new section -- AS 43.55.075 -- to AS 43.55. AS 43.55.075 expands the limitation period for making an assessment of tax imposed by AS 43.55 from three years to six years after the latest return was filed. Requires a producer to report retroactive changes that affect an element used in determining the tax under AS 43.55 and to file amended returns for the periods affected by the change. Under sec. 66 of the bill, AS 43.55.075(a) applies to any tax liability for which the period of limitation had not expired as of the effective date of secs. 14 and 50 of the bill.

**Section 51.** Adds subsections (e), (f), and (g) to AS 43.55.110. AS 43.55.110(e) and (f) authorize the Department of Revenue to require filing and payment by electronic means; AS 43.55.110(g) authorizes the Department of Revenue to issue non-binding advisory bulletins stating the department's interpretation of AS 43.55 and regulations adopted under the chapter.

**Section 52.** Repeals and reenacts AS 43.55.160(a). Provides for the determination of the production tax value of oil and gas produced outside of Cook Inlet, oil produced in Cook Inlet, and gas produced in Cook Inlet. For oil and gas produced outside of Cook Inlet, the production tax value is the gross value at the point of production for that oil or gas, reduced by the lease expenditures and adjustments that are the costs of exploring for, developing, or producing oil located within the leases or properties, and, if the first reduction results in a positive number, lease expenditures and adjustments that are allocated to those leases or properties under AS 43.55.160(e) - (g). (AS 43.55.160(e) is repealed and reenacted in sec. 54 of the bill; AS 43.55.160(f) and (g) are added by sec. 55 of the bill.) For oil and gas produced in Cook Inlet, the production tax value is the gross value at the point of production for that oil or gas, reduced by the lease expenditures and adjustments that are the costs of exploring for, developing, or producing oil located within the leases or properties. (The reenacted subsection removes the distinction between oil and gas produced north of 68 degrees North latitude and other oil and gas produced outside of Cook Inlet; however, the distinction between areas in the state continues in AS 43.55.160(f) and (g).) Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 53.** Amends AS 43.55.160(b) to refer to the tax value calculated under the section, rather than under only (a) of the section. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 54.** Repeals and reenacts AS 43.55.160(e). The reenacted provision addresses three situations in which a producer or explorer may have lease expenditure adjustments, part or all of which could be carried forward rather than being used during the current tax year: 1) the adjustments, if taken as a deduction would reduce the taxable value of oil and gas produced from a lease or property below zero; 2) the costs were incurred on leases or properties outside of Cook Inlet that did not produce oil or gas during the calendar year; 3) the costs are the producer's costs for the exploration for oil or gas located on land outside of Cook Inlet and in which the producer or explorer does not have an operating right, operating interest, or working interest. Before any such expenditures may be carried forward, the adjustments must first be allocated to those leases or properties under new subsections AS 43.55.160(f) and (g) (AS 43.55.160(f) and (g) are added in sec. 55 of the bill.) The current provision provides for a carry forward of adjusted lease expenditures if the adjustments would reduce the taxable value of oil or gas produced during the calendar year below zero. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 55.** Amends AS 43.55.160 by adding four new subsections -- AS 43.55.160(f), (g), (h), and (i). AS 43.55.160(f) provides for the allocation of adjusted lease expenditures that are the costs of exploring for, developing, or producing deposits within leases or properties that include land north of 68 degrees North latitude, and AS 43.55.160(g) provides for the allocation of adjusted lease expenditures that are the costs of exploring for, developing, or producing deposits within leases or properties outside of Cook Inlet and no part of which is north of 68 degrees North latitude. AS 43.55.160(h) describes "Cook Inlet excess adjusted lease expenditures" and provides the means by which excess adjusted lease expenditures attributable to Cook Inlet may be used to establish a carried-forward annual loss under AS 43.55.023(b) (AS 43.55.023(b) is amended in sec. 27 of the bill). AS 43.55.160(i) describes the calculations a producer subject to AS 43.55.160(h) is required to perform for determining the only amount of excess adjusted lease expenditures that may be carried forward under AS 43.55.160(h). Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 56.** Repeals and reenacts AS 43.55.165(a), which describes a producer's lease expenditures. The reenacted subsection describes the types of costs that qualify and provides standards for the department to determine which costs may be allowed. The reasonable allowance for overhead expenses is moved into this subsection from the current AS 43.55.165(b). The reenacted AS 43.55.165(a) did not include from the existing provision references to typical industry standards in the state, costs an operator is allowed to bill to another working interest owner, and the standards used by the Department of Natural Resources when determining net profits for certain leases, as standards for determining lease

expenditures. (The deleted reference standards are moved to AS 43.55.165(b) in sec. 57 of the bill.) Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 57.** Amends AS 43.55.165(b) by deleting the provision for the allowance of reasonable overhead expenses (which was moved to AS 43.55.165(a) in sec. 56 of the bill) and incorporating factors that appear in the current AS 43.55.165(a) for determining what costs are lease expenditures. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 58.** Amends AS 43.55.165(e) (relating to excluded lease expenditures) by deleting language in AS 43.55.165(e)(15) that relates to dismantlement, removal, surrender, or abandonment costs attributable to production before April 1, 2006, and adding additional categories of excluded costs. AS 43.55.165(e)(6) is amended to exclude costs that arise from a violation of law or the failure to comply with an obligation under a lease, permit, or license issued by the state or federal government. AS 43.55.165(e)(19) is added to exclude costs for repair, replacement, or deferred maintenance undertaken in response to an unscheduled interruption or reduction in the rate of production or undertaken in response to an unpermitted release of gas or other hazardous substances. (AS 43.55.165(e)(19) appears to address concerns similar to those addressed in HB 128 and SB 80, but uses different criteria than those in the existing legislation for determining excluded costs.) AS 43.55.165(e)(20) is added to exclude costs related to a refinery or crude oil topping plant, but allows the value of certain products produced from such a facility to be lease expenditures. Under sec. 66 of the bill, this section applies to oil and gas produced after March 31, 2006. Under sec. 71 of the bill, this section is retroactive to April 1, 2006.

**Section 59.** Amends AS 43.55.165(h) by specifying that the lease expenditures that are allocated are the costs of exploring for, developing, or producing oil or gas deposits. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 60.** Amends AS 43.55.170(a) by deleting an exception relating to the subtraction of a payment or credit in calculating billable or billed costs. Under sec. 66 of the bill, this section applies to oil and gas produced after March 31, 2006. Under sec. 71 of the bill, this section is retroactive to April 1, 2006.

**Section 61.** Adds a new section to AS 43.55 -- AS 43.55.890. The new section provides for the publication of information, if aggregated among three or more producers or explorers, that includes the amount of oil or gas production, the amount of taxes levied and paid under AS 43.55, and other information related to credits, expenditures, and the value of oil and gas produced.

**Section 62.** Amends AS 43.55.900 by adding definitions for "non-unitized reservoir," "pool," "producer," and "unit."

**Section 63.** Repeals AS 43.55.023(f) (relating to refundable credits).

**Section 64.** Repeals AS 43.55.165(c) and (d) (relating to the determination of lease expenditures using operating agreements). Under sec. 66 of the bill, these repeals apply to oil and gas produced after March 31, 2006. Under sec. 71 of the bill, these repeals are retroactive to April 1, 2006.

**Section 65.** Repeals AS 43.55.011(l) (relating to the taking of a tax reduction for Cook Inlet production), 43.55.023(i) (relating to transitional investment expenditures occurring after March 31, 2001, and before April 1, 2006), 43.55.160(c) (relating to the determination of the production tax value of oil and gas taxable under AS 43.55.011(g)). Under sec. 66 of the bill, these repeals apply to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, these repeals are effective January 1, 2008.

**Section 66.** Makes identified bill sections applicable to oil and gas produced after March 31, 2006 and after December 31, 2007, to expenditures incurred after December 31, 2007, to tax credit certificates that have not been refunded, and statements and reports required to be filed after December 31, 2007.

**Section 67.** Provides for the assignment of current oil and gas auditors in the Department of Revenue and the Department of Natural Resources and their immediate supervisors to the exempt service, but allows those individuals hired before the effective date of sec. 10 of the bill (adding these position classifications to the exempt service) to choose to continue in the classified service.

**Section 68.** Allows regulations adopted by the Department of Revenue and the Department of Natural Resources to be retroactively applied. Under sec. 71 of the bill, this section is retroactive to April 1, 2006.

**Section 69.** Provides for the treatment of pending applications for transferable credits and for the refund of credits under AS 43.55.023.

**Section 70.** Authorizes the Department of Natural Resources and the Department of Revenue to proceed with the adoption of regulations necessary to implement the Act but provides that an adopted regulation may not take effect before the effective date of the law being implemented.

**Section 71.** Provides for the retroactivity of certain provisions of the Act. The retroactivity is noted in the analysis of the bill sections above.

**Section 72.** Makes certain provisions of the Act effective January 1, 2008. The sections effective on this date are noted in the analysis of the bill sections above.

**Section 73.** Except as provided in sec. 72, makes the Act take effect immediately.

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