

**HB**

**229**

**HOUSE COMMITTEE REPC I**

(9)

Date Referred to Committee: April 14, 2009

FURTHER REFERRALS: Finance

Date of Committee Action: 24 Mar 2010

The RESOURCES Committee considered:

HOUSE BILL NO. 229

"An Act amending and extending the exploration and development incentive tax credit under the Alaska Net Income Tax Act for operators and working interest owners directly engaged in the exploration for and development of gas for delivery and sale from a lease or property in the state; providing for an effective date by amending the effective date for sec. 2, ch. 61, SLA 2003; and providing for an effective date."

**HB 229 GAS EXPLORATION\DEVELOPMENT TAX CREDIT**

Recommends it be replaced with  HCS or  CS for HB 229 (Res)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 DHS  
 LWF  
 LAW  
 LEG  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

<b>NEW FISCAL NOTES</b>				
* Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
Rev			✓	

<b>PREVIOUS FISCAL NOTES</b>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	OLSON	X			
	EDGERTON		X		
	LUCK			X	
	SEATON			X	
	WILSON	X			
Chair:	NEUMEIER	✓			
Chair:	JOHNSON	✓			

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 24, 2010

**SUBJECT:** Providing data to the Department of Natural Resources (Amendment to CSHB 229( ), Draft Version "E"; Work Order No. 26-LS0900\E.7)

**TO:** Representative Paul Seaton  
Attn: Louie Flora

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

Enclosed is the amendment you requested that would require a person entitled to the credit in AS 43.20.043 to submit data to the Department of Natural Resources (DNR) under AS 43.55.025(f)(2) that would be required for a credit under AS 43.55.025.

In the amendment, a person *entitled* to the credit would be required to provide the data to DNR. Is your intent to require this of a person who is entitled to the credit, in other words who is making the qualifying investment or expenditure, or would you rather require the data submission only before the person actually applies the credit against a tax liability?

If you would like the information submitted to DNR only before taking the credit, you could add the following language after "3" in the amendment: "before applying the credit against a tax liability under this chapter.".

If I may be of further assistance, please advise.

DMB:plm  
10-172.plm

Enclosure

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: CSHB 229( ), Draft Version "E"

1 Page 3, following line 16:

2 Insert a new bill section to read:

3 **\*\* Sec. 4.** AS 43.20.043(e) is amended to read:

4 (e) A taxpayer entitled to a credit under this section

5 (1) may not convey, assign, or transfer the credit to another taxpayer or  
6 business entity unless the conveyance, assignment, or transfer of the credit is part of  
7 the conveyance, assignment, or transfer of the taxpayer's business;

8 (2) forfeits the credit to which the taxpayer is entitled during the tax  
9 year and any carryover of it under (c) of this section, but does not forfeit the portion of  
10 the credit that accrued in a previous taxable year that may be carried over under (c) of  
11 this section, if the taxpayer

12 (A) disposes of the qualified capital investment;

13 (B) takes the qualified investment out of service; or

14 (C) transfers the qualified investment out of this state;

15 **(3) shall submit to the Department of Natural Resources all data**  
16 **that would be required to be submitted under AS 43.55.025(f)(2) for a credit**  
17 **under AS 43.55.025.**

18

19 Renumber the following bill sections accordingly.

20

21 Page 5, line 2:

22 Delete "sec. 8"

23 Insert "sec. 9"

1

Insert "sec. 9"

# Alaska State Legislature

State Capitol, Room 208  
Juneau, Alaska 99801-1182  
Phone: 907-465-3779  
Fax: 907-465-2833  
Toll Free: 800-469-3779



145 Main St. Loop  
Second Floor  
Kenai, Alaska 99611  
Phone: 907-283-7223  
Fax: 907-283-7184

## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

### SPONSOR STATEMENT

**HOUSE BILL 229:** *"An Act amending and extending the exploration and development incentive tax credit under the Alaska Net Income Tax Act for operators and working interest owners directly engaged in the exploration for and development of gas for delivery and sale from a lease or property in the state; providing for an effective date by amending the effective date for sec. 2, ch. 61, SLA 2003; and providing for an effective date."*

House Bill 229 amends and extends the exploration and development incentive tax credit that was originally enacted in the 23rd legislature in 2003 as HB 61. This tax credit continues to be applicable, under the Alaska Net Income Tax Act, to operators and working interest owners directly engaged in the exploration for and development of natural gas, primarily in the Cook Inlet area.

To more strongly encourage companies to invest additional capital in exploring for and developing new natural gas reserves, this legislation makes four significant changes to current law:

1. Increases the amount of the credit to 25% (from 10%) of the amount of qualified capital investment and qualified services spending.
2. Removes the 50% limitation on the amount of credits that can apply in a single year.
3. Removes the "successful efforts" requirement that developers must find and deliver new gas resources to market to qualify for the credit.
4. Extends the sunset date of the investment tax credit from January 1, 2013 to January 1, 2020.

This legislation makes no changes to definitions of qualified capital investment or qualified services.

Annual natural gas production and supply in the Cook Inlet area have been declining for a number of years. During the same time, demand has been increasing steadily. Therefore, a sharp increase in drilling to find new reserves is drastically needed. The original Investment Tax Credit enacted in 2003, while modestly successful in stimulating new drilling, needs to be a more effective incentive to developers in order to increase capital spending. These changes will go a long way toward achieving that goal.

26-LS0900E  
Bullock  
2/18/10

**CS FOR HOUSE BILL NO. 229( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES CHENAULT, Olson, Neuman**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act amending and extending the exploration and development incentive tax credit**  
2 **under the Alaska Net Income Tax Act for operators and working interest owners**  
3 **directly engaged in the exploration for and development of gas from a lease or property**  
4 **in the state; providing for an effective date by amending the effective date for sec. 2, ch.**  
5 **61, SLA 2003; and providing for an effective date."**

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

7 **\* Section 1. AS 43.20.043(a) is amended to read:**

8 (a) Subject to the terms and conditions of this section, and in addition to any  
9 other credit authorized to the taxpayer by this chapter, a taxpayer that is an operator or  
10 working interest owner directly engaging in the exploration for and development of  
11 gas may apply as a credit against the state tax liability that may be imposed on the  
12 taxpayer under this chapter,

13 **(1) for a tax year beginning after December 31, 2002, and before**

January 1, 2010,

(A) [(1)] 10 percent of the taxpayer's qualified capital investment; and

(B) [(2)] 10 percent of the annual cost incurred by the taxpayer for qualified services in the state during each tax year for which a credit is allowable for a qualified capital investment for any gas reserve of the taxpayer or for each year that qualified costs are incurred for a gas reserve for which the taxpayer previously elected to claim a credit under (A) of this paragraph; and

(2) for a tax year beginning after December 31, 2009,

(A) 25 percent of the taxpayer's qualified capital investment; and

(B) 25 percent of the annual cost incurred by the taxpayer for qualified services in the state during each tax year for which a credit is allowable for a qualified capital investment for any gas reserve of the taxpayer or for each year that qualified costs are incurred for a gas reserve for which the taxpayer previously elected to claim a credit under (A) of this paragraph [(1) OF THIS SUBSECTION].

\* Sec. 2. AS 43.20.043(b) is amended to read:

(b) Expenditures qualifying for the taxpayer's qualified investment credit under (a)(1)(A) or (a)(2)(A) [(a)(1)] of this section must be

(1) cash expenditures or binding payment agreements entered into after (A) June 30, 2003, and before January 1, 2010, if the claim of the credit is made under (a)(1)(A) of this section; or

(B) December 31, 2009, if the claim of the credit is made under (a)(2)(A) of this section; and

(2) made for assets first placed in service in the state in or before the tax year in which the credit is claimed through the date the

(A) wells [RESERVES] produce gas for sale and delivery; for purposes of this subparagraph [PARAGRAPH], "placed in service in the state" means that the first use of the qualified investment is in this state; if the

1 property on which the claim of the credit is based has been used elsewhere in  
2 the tax year of acquisition and is brought to this state during that year or a  
3 subsequent year, the property does not qualify for the investment credit; or

4 **(B) a gas well is determined not to be capable of production**  
5 **in commercial quantities.**

6 \* Sec. 3. AS 43.20.043(c) is amended to read:

7 (c) The credit each [PER] tax year allowed by (a) of this section may not  
8 exceed [50 PERCENT OF] the taxpayer's total tax liability under this chapter, but  
9 shall be calculated before the application of any other credits allowed under this  
10 chapter. An unused portion of the credit for the tax year

11 (1) may be carried forward into one or more of the following tax years,  
12 except that the unused credit from one tax year may not be carried forward for more  
13 than five following tax years;

14 (2) shall be applied to the taxpayer's tax liability under this chapter  
15 during the following tax year before allowance of a credit allowed by (a) of this  
16 section for that following tax year.

17 \* Sec. 4. AS 43.20.043(f) is amended to read:

18 (f) A taxpayer is not entitled to a credit under this section for expenditures that  
19 are made or incurred for the qualified capital investment or for qualified services made  
20 for exploration and development of gas that occur in the area of Alaska lying north of  
21 68 degrees North latitude or that are made or incurred to transport gas from reserves  
22 located in the area of Alaska lying north of 68 degrees North latitude or for the  
23 **delivery of Alaska North Slope natural gas to tidewater below 68 degrees North**  
24 **latitude.**

25 \* Sec. 5. AS 43.20.043(i)(1) is amended to read:

26 (1) "qualified capital investment" means a cash expenditure or binding  
27 payment agreement, as described in (b)(1) of this section, for real property or tangible  
28 personal property used in this state in the exploration and development of any gas  
29 **reserve regardless of whether there has been commercial production in the area**  
30 **or whether the exploration and development activity results in the production of**  
31 **gas or a well not capable of production in commercial quantities** [RESERVES IN

1 A GAS RESERVOIR FOR WHICH THERE HAS NOT BEEN COMMERCIAL  
2 PRODUCTION IF THE RESERVES PRODUCE GAS FOR SALE AND  
3 DELIVERY]; in this paragraph, "property" includes

4 (A) property used in the operation or maintenance of facilities  
5 for exploration or development of gas;

6 (B) property that is placed in use under a capitalized lease or an  
7 operating lease; and

8 (C) the following property used for the exploration and  
9 development of gas:

10 (i) machinery, appliances, supplies, and equipment;

11 (ii) drilling rigs, wells, gathering lines and transmission  
12 lines, pumping stations, compressor stations, power plants, topping  
13 plants, and processing units;

14 (iii) roads, docks and other port facilities, and helicopter  
15 pads;

16 (iv) maintenance equipment and facilities, and  
17 maintenance camps and other related facilities; and

18 (v) communications facilities owned by a person whose  
19 principal business in the state is the exploration for or development of  
20 gas and whose operation of the communications facilities directly  
21 relates to the conduct of that business;

22 \* Sec. 6. AS 43.20.043 is amended by adding a new subsection to read:

23 (j) A taxpayer shall claim the credit authorized in (a) of this section on a  
24 timely filed tax return for the year in which the qualified capital investment is made,  
25 on a timely filed amended tax return, or on a timely filed tax return for the year  
26 immediately following the year in which the qualified capital investment is made. The  
27 election to apply the credit authorized in (a) of this section may not be an irrevocable  
28 election.

29 \* Sec. 7. The uncodified law of the State of Alaska enacted by sec. 3, ch. 61, SLA 2003, is  
30 amended to read:

31 Sec. 3. CLAIM OF GAS EXPLORATION AND DEVELOPMENT TAX

1 CREDIT CONTINUED. A taxpayer who, on the effective date of repeal of  
2 AS 43.20.043 by secs. 2 and 5, ch. 61, SLA 2003, as amended by sec. 8 [SEC. 2] of  
3 this 2010 Act, claims the balance of any unused portion of the gas exploration and  
4 development tax credit as a carry-forward under AS 43.20.043(c), may,  
5 notwithstanding the repeal of that subsection, continue to claim the balance of the  
6 credit until the claim of the credit is exhausted or until the tax year ending  
7 December 31, 2024 [2017], whichever occurs earlier. The provisions of AS 43.20.043  
8 as they read on the day immediately preceding the effective date of the repeal of that  
9 section apply to the claim of the credit if carried forward under this section.

10 \* Sec. 8. Section 5, ch. 61, SLA 2003, is amended to read:

11 Sec. 5. Section 2, ch. 61, SLA 2003, [OF THIS ACT] takes effect January 1,  
12 2020 [2013].

13 \* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

State Capitol, Room 208  
Juneau, Alaska 99801-1182  
Phone: 907-465-3779  
Fax: 907-465-2833  
Toll Free: 800-469-3779



145 Main St. Loop  
Second Floor  
Kenai, Alaska 99611  
Phone: 907-283-7223  
Fax: 907-283-7184

## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE SECTIONAL ANALYSIS

**COMMITTEE SUBSTITUTE FOR HOUSE BILL 229:** *"An Act amending and extending the exploration and development incentive tax credit under the Alaska Net Income Tax Act for operators and working interest owners directly engaged in the exploration for and development of gas from a lease or property in the state; providing for an effective date by amending the effective date by amending the effective date for sec. 2, ch. 61, SLA 2003; and providing for an effective date."*

**Section 1:** Amends 434.20.043(a), Gas exploration and development tax credit. Adds before January 1, 2010, to the time in a tax year for which a credit against state tax liability may be applied. Also further adds language that for a tax year beginning after December 31, 2009, 25 per cent of the taxpayer's qualified investment and 25 per cent of the annual cost incurred by the taxpayer for qualified services in the state during each tax year for which a credit is allowable for a qualified capital investment for any gas reserve of the taxpayer or for each year that qualified costs are incurred for a gas reserve for which the taxpayer previously elected to claim a credit.

**Section 2:** Amends AS 43.20.043(b), Gas exploration and development tax credit. Adds before July 1, 2010, if a claim is made under (a)(1)(A) found in Section 1 or December 31, 2009, if the claim of credit is made under (a)(2)(A) also found in Section 1. Replaces the word "reserves" with wells and "paragraph" with "subparagraph". It adds language that includes expenditures for a gas well that is determined not to be capable of production in commercial quantities as qualifying for the taxpayer's qualified investment credit.

**Section 3:** Amends AS 43.20.043(c), Gas exploration and development tax credit. States the credit allowed will be made for each tax year rather than per year and eliminates the 50 per cent provision of the taxpayer's total tax liability.

**Section 4:** Amends AS 43.20.043(f), Gas exploration and development tax credit. Adds language that disallows a credit under this section for the delivery of North Slope gas to tidewater below 68 degrees north latitude.

**Section 5:** Amends AS 43.20.043(i)(1), Qualified capital investment. Deletes "reserves in a gas reservoir for which there has not been commercial production if the reserves produce gas for sale and delivery". It adds language that includes any gas reserve regardless of whether there has been commercial production in the area or whether the

exploration and development activity results in the production of gas or a well not capable of production in commercial quantities.

**Section 6:** Amends AS 43.20.043, Adds a new subsection that reads: A taxpayer shall claim the credit authorized in (a) of this section on a timely filed tax return for the year in which the qualified capital investment is made, on a timely filed amended tax return, or on a timely filed tax return for the year immediately following the year in which the qualified capital investment is made. The election to apply the credit authorized in (a) of this section may not be an irrevocable election.

**Section 7:** Amends uncodified law enacted by Section 3, Chapter 61, SLA 2003. Adds secs. 2 and 5, ch. 61, SLA 2003 as amended by Section 8 of this bill. Also amends the carry forward of the tax xcredit from 2017 to 2024.

**Section 8:** Amends uncodified law enacted by Section 5, Chapter 61, SLA 2003. Adds ch. 61, SLA 2003 to take effect on January 1, 2020 instead of 2013.

**Section 9:** Immediate effective date.



# LAWS OF ALASKA

2003

**Source**

SCS CSHB 61(RES)

**Chapter No.**

\_\_\_\_\_

**AN ACT**

Establishing an exploration and development incentive tax credit for operators and working interest owners directly engaged in the exploration for and development of gas for sale and delivery without reference to volume from a lease or property in the state; and providing for an effective date.

\_\_\_\_\_

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

THE ACT FOLLOWS ON PAGE 1

**AN ACT**

1 Establishing an exploration and development incentive tax credit for operators and working  
2 interest owners directly engaged in the exploration for and development of gas for sale and  
3 delivery without reference to volume from a lease or property in the state; and providing for  
4 an effective date.

5

6 **\* Section 1.** AS 43.20 is amended by adding a new section to read:

7 **Sec. 43.20.043. Gas exploration and development tax credit.** (a) Subject to  
8 the terms and conditions of this section, and in addition to any other credit authorized  
9 to the taxpayer by this chapter, a taxpayer that is an operator or working interest owner  
10 directly engaging in the exploration for and development of gas may apply as a credit  
11 against the state tax liability that may be imposed on the taxpayer under this chapter,  
12 for a tax year beginning after December 31, 2002,

13 (1) 10 percent of the taxpayer's qualified capital investment; and

14 (2) 10 percent of the annual cost incurred by the taxpayer for qualified

1 services in the state during each tax year for which a credit is allowable for a qualified  
2 capital investment under (1) of this subsection.

3 (b) Expenditures qualifying for the taxpayer's qualified investment credit  
4 under (a)(1) of this section must be

5 (1) cash expenditures or binding payment agreements entered into after  
6 June 30, 2003; and

7 (2) made for assets first placed in service in the state in or before the  
8 tax year in which the credit is claimed through the date the reserves produce gas for  
9 sale and delivery; for purposes of this paragraph, "placed in service in the state" means  
10 that the first use of the qualified investment is in this state; if the property on which the  
11 claim of the credit is based has been used elsewhere in the tax year of acquisition and  
12 is brought to this state during that year or a subsequent year, the property does not  
13 qualify for the investment credit.

14 (c) The credit per tax year allowed by (a) of this section may not exceed 50  
15 percent of the taxpayer's total tax liability under this chapter, but shall be calculated  
16 before the application of any other credits allowed under this chapter. An unused  
17 portion of the credit for the tax year

18 (1) may be carried forward into one or more of the following tax years,  
19 except that the unused credit from one tax year may not be carried forward for more  
20 than five following tax years;

21 (2) shall be applied to the taxpayer's tax liability under this chapter  
22 during the following tax year before allowance of a credit allowed by (a) of this  
23 section for that following tax year.

24 (d) To obtain the credit allowed by this section, the taxpayer shall, with the  
25 taxpayer's tax return, submit, on a form prescribed by the department, information that  
26 demonstrates that the taxpayer is eligible for the credit and evidence of the expenses  
27 that are the basis of the claim of the credit. The taxpayer has the burden of  
28 demonstrating compliance with the requirements of this section to entitle the taxpayer  
29 to the claim of and the amount of the credit.

30 (e) A taxpayer entitled to a credit under this section

31 (1) may not convey, assign, or transfer the credit to another taxpayer or

1 business entity unless the conveyance, assignment, or transfer of the credit is part of  
2 the conveyance, assignment, or transfer of the taxpayer's business;

3 (2) forfeits the credit to which the taxpayer is entitled during the tax  
4 year and any carryover of it under (c) of this section, but does not forfeit the portion of  
5 the credit that accrued in a previous taxable year that may be carried over under (c) of  
6 this section, if the taxpayer

7 (A) disposes of the qualified capital investment;

8 (B) takes the qualified investment out of service; or

9 (C) transfers the qualified investment out of this state.

10 (f) A taxpayer is not entitled to a credit under this section for expenditures that  
11 are made or incurred for the qualified capital investment or for qualified services made  
12 for exploration and development of gas that occur in the area of Alaska lying north of  
13 68 degrees North latitude or that are made or incurred to transport gas from reserves  
14 located in the area of Alaska lying north of 68 degrees North latitude.

15 (g) A taxpayer who obtains a credit under this section may not claim a tax  
16 credit or royalty modification provided for under any other title. However, a taxpayer  
17 may, at the taxpayer's election, forgo a credit under this section in order to continue to  
18 qualify for a credit provided for in another title.

19 (h) For purposes of determining allowable credits under this section, the  
20 department shall allow only expenditures and payments that are not inconsistent with  
21 the expenditures authorized under 26 U.S.C. (Internal Revenue Code) for exploration  
22 and development of natural resources.

23 (i) In this section,

24 (1) "qualified capital investment" means a cash expenditure or binding  
25 payment agreement, as described in (b)(1) of this section, for real property or tangible  
26 personal property used in this state in the exploration and development of gas reserves  
27 in a gas reservoir for which there has not been commercial production if the reserves  
28 produce gas for sale and delivery; in this paragraph, "property" includes

29 (A) property used in the operation or maintenance of facilities  
30 for exploration or development of gas;

31 (B) property that is placed in use under a capitalized lease or an

1 operating lease; and

2 (C) the following property used for the exploration and  
3 development of gas:

4 (i) machinery, appliances, supplies, and equipment;

5 (ii) drilling rigs, wells, gathering lines and transmission  
6 lines, pumping stations, compressor stations, power plants, topping  
7 plants, and processing units;

8 (iii) roads, docks and other port facilities, and helicopter  
9 pads;

10 (iv) maintenance equipment and facilities, and  
11 maintenance camps and other related facilities; and

12 (v) communications facilities owned by a person whose  
13 principal business in the state is the exploration for or development of  
14 gas and whose operation of the communications facilities directly  
15 relates to the conduct of that business;

16 (2) "qualified services"

17 (A) means expenditures for labor, seismic, and other services  
18 that are directly applicable to a qualified capital investment;

19 (B) does not include lease operating expenses.

20 \* Sec. 2. AS 43.20.043 is repealed.

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

23 CLAIM OF GAS EXPLORATION AND DEVELOPMENT TAX CREDIT  
24 CONTINUED. A taxpayer who, on the effective date of repeal of AS 43.20.043 by sec. 2 of  
25 this Act, claims the balance of any unused portion of the gas exploration and development tax  
26 credit as a carry-forward under AS 43.20.043(c), may, notwithstanding the repeal of that  
27 subsection, continue to claim the balance of the credit until the claim of the credit is exhausted  
28 or until the tax year ending December 31, 2017, whichever occurs earlier. The provisions of  
29 AS 43.20.043 as they read on the day immediately preceding the effective date of the repeal  
30 of that section apply to the claim of the credit if carried forward under this section.

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

1 read:

2 REPORT ON EFFECT OF GAS EXPLORATION AND DEVELOPMENT TAX  
3 CREDIT. Not later than November 30, 2008, the Department of Revenue shall prepare and  
4 publish a report on the effect of the gas exploration and development tax credit authorized by  
5 AS 43.20.043, added by sec. 1 of this Act. The department shall advise the legislature of the  
6 availability of the report and, within the first 10 days of the First Regular Session of the  
7 Twenty-Sixth Alaska State Legislature, transmit copies of the report to the chairs or co-chairs  
8 of the House and Senate Resources Committees and the chairs or co-chairs of the House and  
9 Senate Special Committees on Oil and Gas, if established. The report must address

10 (1) the number of successful gas discoveries for which a tax credit is provided  
11 under AS 43.20.043;

12 (2) the volume or amount of new gas reserves brought into production for  
13 which a tax credit is provided under AS 43.20.043;

14 (3) the total credits allowed under AS 43.20.043 that are applied to the tax  
15 liability through the date of preparation of the report;

16 (4) the total credits applied for under AS 43.20.043 that are not yet approved  
17 as of the date of preparation of the report;

18 (5) royalties obtained and oil and gas property production taxes paid from new  
19 gas production and anticipated from gas production for production for which credits are  
20 allowed under AS 43.20.043; and

21 (6) any other information that, in the judgment of the commissioner of  
22 revenue, would evaluate the effectiveness of the gas exploration and development tax credit  
23 authorized under AS 43.20.043.

24 \* **Sec. 5.** Section 2 of this Act takes effect January 1, 2013.

25 \* **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect immediately under  
26 AS 01.10.070(c).

**State of Alaska**  
Department of Revenue  
Commissioner's Office



**SEAN PARNELL, GOVERNOR**  
333 Willoughby Avenue, 11<sup>th</sup> Floor  
P.O. Box 110400  
Juneau, Alaska 99811-0405  
Phone: (907) 465-2300  
Fax: (907) 465-2394

ALASKA DEPARTMENT OF REVENUE  
TAX DIVISION

REPORT ON THE GAS EXPLORATION AND DEVELOPMENT TAX CREDIT  
UNDER AS 43.20.043

August 7, 2009

The uncodified law of Alaska requires the Department of Revenue to prepare and publish a report, not later than November 30, 2008, on the effect of the gas exploration credit under AS 43.20.043 Gas Exploration and Development Tax Credit.

The scope of the study is defined by

- legislation enacted in 2003
- tax year beginning after December 31, 2002
- NOT located in the area of Alaska lying north of 68 degrees north latitude

The metrics established to measure the effect are

- number of successful gas discoveries
- volume of new gas reserves
- credits allowed that are applied to the tax liability
- credits applied for that are not yet approved
- royalties obtained and production taxes paid

This report addresses each item in Sec. 4 according to the above metrics and scope.

*(1) the number of successful gas discoveries for which a tax credit is provided under AS 43.20.043.*

The Department has received claims for three operating units.

*(2) the volume or amount of new gas reserves brought into production for which a tax credit is provided under AS 43.20.043.*

None. The three operating units for which the Department received claims had already announced the discoveries prior to enactment of the legislation. The natural gas reserves associated with those discoveries are not considered new in the sense of being attributable to the legislation.

*(3) the total credits allowed under AS 43.20.043 that are applied to the tax liability through the date of preparation of the report.*

Confidentiality precludes disclosing the amount of credits claimed due to the number of credit claimants.

*(4) the total credits applied for under AS 43.20.043 that are not yet approved as of the date of preparation of the report.*

AS 43.20.043 does not contain any requirement for pre-approval. Pre-approval is not a customary provision for business tax credits in either the federal or state corporate income tax codes.

*(5) royalties obtained and oil and gas property (and) production taxes paid from new gas production and anticipated from gas production for which credits are allowed under AS 43.20.043.*

None. Companies applying for credits have not announced any new gas discoveries since enactment of the legislation. Without discoveries after the enactment of the legislation, there are no "new" reserves from which to produce "new" gas and thereby collect the associated royalties and taxes.

*(6) any other information that, in the judgment of the commissioner of revenue, would evaluate the effectiveness of the gas exploration and development tax credit authorized under AS 43.20.043.*

The Commissioner offers no additional information at this time.

**Testimony of Carri Lockhart, Marathon Oil Co, in  
support of State of Alaska HB 229  
House Resources Committee  
March 15, 2010  
DRAFT**

Good afternoon. My name is Carri Lockhart and I am the Production Manager for Marathon Oil Company's Alaska Business. Before I begin, I would like to extend the appreciation of Marathon Oil Company, for this opportunity to testify in support of House Bill 229.

By way of background, Marathon Oil Company's Alaska operations are focused on natural gas production operations, limited to Cook Inlet. In 2009, our natural gas sales from Alaska averaged 87 mmcf/d. We sold to essentially every natural gas market available including the local utilities - Enstar and Chugach Electric, Tesoro, and the Department of Defense. We also provided natural gas to the ConocoPhillips/Marathon LNG plant. Marathon

has been in business in AK for over 55 years and we remain committed to serving the natural gas needs of SouthCentral AK through our various contractual commitments.

As you are aware, in 2003 the Legislature passed, and the Governor signed several bills directed at providing incentives for new exploration and development activities. Marathon was particularly interested in House Bill 61, which was intended to incentivize the exploration and development of natural gas reserves in the Cook Inlet. The bill under consideration by this committee, HB 229, will merely strengthen the incentives provided for by the earlier bill.

One might ask about the need to provide incentives for natural gas development in the Cook Inlet. The answer to this question is found by considering the long-term decline in natural gas reserves and deliverability which the Cook Inlet has experienced. What must be addressed is whether there is currently sufficient exploration and development activity to address such decline in reserves and deliverability, and not simply to ask whether the Cook

Inlet is running out of gas. At the current minimal level of Cook Inlet activity it is unlikely that Cook Inlet reserve additions will replace annual production on an ongoing long-term basis. As such, natural gas reserves and deliverability are at risk for continued decline in the Cook Inlet, resulting in the exposure to unmet utility needs in the future.

The lack of Cook Inlet activity (especially exploration) is an artifact of the historic oversupply of natural gas which kept prices well below lower-48 indexed prices, creating a lack of incentive for additional drilling. Furthermore the regulatory processes and deterioration in market availability have added to project uncertainty. The project economics and market uncertainties have made it difficult for projects to complete effectively for finite funding.

So how will HB 229 help?

As we are all painfully aware, Alaskan project economics are not considered solely on their absolute merit. They are also scrutinized on a relative scale in comparison to other worldwide opportunities in which companies such as Marathon may invest. The intent of HB 229 is to help level the playing field between Alaskan projects and other investment opportunities around the world.

HB 229 is intended to continue to provide an incentive to oil and gas exploration and development activities through an investment tax credit. You should have before you the committee substitute for HB229 (version E). Since this is the first hearing for HB229, let me walk through the main points of this new legislation: This legislation makes six significant changes to current law:

1. Section 1 increases the amount of the credit from 10% to 25% of the amount of qualified capital investment and qualified services spending as well as clarifying that the credits can apply to costs incurred for a gas reserve for which the taxpayer previously elected to claim a credit.

2. Section 2 adjusts the dates for when qualified expenditures must be made to qualify for the old 10% and new 25% credits. It also changes the term “reserves” to “wells” to clarify that “wells” produce gas whereas “reserves” are what is being produced.
3. Section 3 removes the 50% limitation on the amount of credits that can apply in a single year, increasing the time value of money for the credits.
4. Section 4 clarifies that the credits do not apply to North Slope gas that is brought into Southcentral.
5. Section 5 removes the “successful efforts” requirement that developers must find and deliver new gas resources to market to qualify for the credit. It also clarifies that the credits can be applied to a gas reserve regardless of whether or not there has been previous gas production in the area.
6. Section 6 clarifies that the credits can be taken on a current tax return, on a timely filed tax return or on a timely filed tax

return for the year immediately following the year the qualified capital investment is made.

7. Section 7 adjusts the date the credits expire from 2017 to 2024.
8. Section 8 extends the sunset date of the investment tax credit from January 1, 2013 to January 1, 2020.
9. Section 9 is gives this legislation an immediate effective date.

In summary, Marathon Oil Company believes HB 229 is one part of the equation to enhance Cook Inlet exploration and development activities, attempting to create more certainty in the overall natural gas deliverability in Cook Inlet. I would also add that timing is important. It takes multiple years to properly plan and execute drilling activity in Cook Inlet, which is necessary to meet future overall deliverability needs in SouthCentral AK.

I would be happy to answer any questions the committee may have.

# Alaska State Legislature

State Capitol, Room 208  
Juneau, Alaska 99801-1182  
Phone: 907-465-3779  
Fax: 907-465-2833  
Toll Free: 800-469-3779



145 Main St. Loop  
Second Floor  
Kenai, Alaska 99611  
Phone: 907-283-7223  
Fax: 907-283-7184

## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE SECTIONAL ANALYSIS

**COMMITTEE SUBSTITUTE FOR HOUSE BILL 229:** *"An Act amending and extending the exploration and development incentive tax credit under the Alaska Net Income Tax Act for operators and working interest owners directly engaged in the exploration for and development of gas from a lease or property in the state; providing for an effective date by amending the effective date by amending the effective date for sec. 2, ch. 61, SLA 2003; and providing for an effective date."*

**Section 1:** Amends 434.20.043(a), Gas exploration and development tax credit. Adds before January 1, 2010, to the time in a tax year for which a credit against state tax liability may be applied. Also further adds language that for a tax year beginning after December 31, 2009, 25 per cent of the taxpayer's qualified investment and 25 per cent of the annual cost incurred by the taxpayer for qualified services in the state during each tax year for which a credit is allowable for a qualified capital investment for any gas reserve of the taxpayer or for each year that qualified costs are incurred for a gas reserve for which the taxpayer previously elected to claim a credit.

**Section 2:** Amends AS 43.20.043(b), Gas exploration and development tax credit. Adds before July 1, 2010, if a claim is made under (a)(1)(A) found in Section 1 or December 31, 2009, if the claim of credit is made under (a)(2)(A) also found in Section 1. Replaces the word "reserves" with wells and "paragraph" with "subparagraph". It adds language that includes expenditures for a gas well that is determined not to be capable of production in commercial quantities as qualifying for the taxpayer's qualified investment credit.

**Section 3:** Amends AS 43.20.043(c), Gas exploration and development tax credit. States the credit allowed will be made for each tax year rather than per year and eliminates the 50 per cent provision of the taxpayer's total tax liability.

**Section 4:** Amends AS 43.20.043(f), Gas exploration and development tax credit. Adds language that disallows a credit under this section for the delivery of North Slope gas to tidewater below 68 degrees north latitude.

**Section 5:** Amends AS 43.20.043(i)(1), Qualified capital investment. Deletes "reserves in a gas reservoir for which there has not been commercial production if the reserves produce gas for sale and delivery". It adds language that includes any gas reserve regardless of whether there has been commercial production in the area or whether the

exploration and development activity results in the production of gas or a well not capable of production in commercial quantities.

**Section 6:** Amends AS 43.20.043, Adds a new subsection that reads: A taxpayer shall claim the credit authorized in (a) of this section on a timely filed tax return for the year in which the qualified capital investment is made, on a timely filed amended tax return, or on a timely filed tax return for the year immediately following the year in which the qualified capital investment is made. The election to apply the credit authorized in (a) of this section may not be an irrevocable election.

**Section 7:** Amends uncodified law enacted by Section 3, Chapter 61, SLA 2003. Adds secs. 2 and 5, ch. 61, SLA 2003 as amended by Section 8 of this bill. Also amends the carry forward of the tax xcredit from 2017 to 2024.

**Section 8:** Amends uncodified law enacted by Section 5, Chapter 61, SLA 2003. Adds ch. 61, SLA 2003 to take effect on January 1, 2020 instead of 2013.

**Section 9:** Immediate effective date.

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 229  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB229-REV-TAX-2-23-10 Dept. Affected: Revenue  
 Title Gas Exploration / Development Tax Credit RDU Taxation and Treasury  
 Component Tax Division  
 Sponsor Representative Chenault  
 Requester (H) Resources Component Number 2476

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

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>								
<b>CHANGE IN REVENUES ( )</b>		***	***	***	***	***	***	***

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

See Attached.

Prepared by: Tim Harper, Economist III/Robynn Wilson, Revenue Audit Supervisor  
 Division: Tax Division  
 Approved by: Ginger Blaisdell, Director  
Administrative Services Division

Phone (907) 269-1020  
 Date/Time 2-22-10; 12:06pm  
 Date 2-23-10; 9:48am

## FISCAL NOTE

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

BILL NO. HB 229

### ANALYSIS CONTINUATION

#### **Bill Language:**

This bill extends the existing Gas Exploration and Development tax credit for investment in qualified capital expenditures and related qualified services, dealing with those capital expenditures. The Gas Exploration and Development tax credit is taken against the Corporate Income Tax (CIT), before any other federal or state credits are taken. One hundred percent of a company's tax liability can be offset by this credit in a given tax year. Additionally, credits from prior years must be used before current year credits can be used. A credit must be used within five years, otherwise it expires.

Currently, 10% of qualifying capital expenditures and operating expenditures can be taken as capital credits, sunsetting in 2013. The bill would increase the credit rate to 25% for qualifying capital and service expenditures incurred after June 30, 2011 for tax years beginning after December 31, 2010. The 25% rate would sunset on January 1, 2020. Under existing law all remaining tax credits under AS 43.20.043 expire December 31, 2017. This bill would change the sunset date to expire the tax year ending December 31, 2024.

In order for an expenditure to qualify for the 10% rate, cash expenditures or binding payment agreements must be made between June 30, 2003 and before July 1, 2011. Expenditures qualify for the 25% rate cash expenditures or binding payment agreements must be made after June 30, 2011.

The credit is limited to activities south of 68 degrees North latitude and exempts delivery of Alaska North Slope natural gas to tidewater.

#### **Revenues:**

It is difficult to determine the number of taxpayers who would take advantage of this tax credit, the degree to which the credit would be utilized, and other exogenous variables impacting the revenues the state would collect. Reduction in CIT are indeterminate at this time.

Additionally, the State of Alaska would most likely see a decline in the use of other credits. For example, since a taxpayer would have to utilize the Gas Exploration and Development tax credit first, it is likely we would see a reduction in the Education Credits. Especially, if the taxpayer has limited tax liabilities.

#### **Expenditures:**

The provisions of this bill could be implemented with existing state resources. No additional personnel or resources would be needed, since the DOR is already performing these duties.

# Alaska State Legislature

State Capitol, Room 208  
Juneau, Alaska 99801-1182  
Phone: 907-465-3779  
Fax: 907-465-2833  
Toll Free: 800-469-3779



145 Main St. Loop  
Second Floor  
Kenai, Alaska 99611  
Phone: 907-283-7223  
Fax: 907-283-7184

## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE SECTIONAL ANALYSIS

**HOUSE BILL 229:** *"An Act amending and extending the exploration and development incentive tax credit under the Alaska Net Income Tax Act for operators and working interest owners directly engaged in the exploration for and development of gas for delivery and sale from a lease or property in the state; providing for an effective date by amending the effective date for sec. 2, ch. 61, SLA 2003; and providing for an effective date."*

**Section 1:** Amends 434.20.043(a), Gas exploration and development tax credit. Adds before January 1, 2011, to the time in a tax year for which a credit against state tax liability may be applied. Also further adds language that for a tax year beginning after December 31, 2010, 25 per cent of the taxpayer's qualified investment and 25 per cent of the annual cost incurred by the taxpayer for qualified services during each tax year for which a credit is allowable.

**Section 2:** Amends AS 43.20.043(b), Gas exploration and development tax credit. Adds before July 1, 2011, if a claim is made under (a)(1)(A) found in Section 1 or June 30, 2011, if the claim of credit is made under (a)(2)(A) also found in Section 1.

**Section 3:** Amends AS 43.20.043(c), Gas exploration and development tax credit. States the credit allowed will be made for each tax year rather than per year and eliminates the 50 per cent provision of the taxpayer's total tax liability.

**Section 4:** Amends AS 43.20.043(f), Gas exploration and development tax credit. Adds language that credits do not apply to North Slope gas that is brought into Southcentral.

**Section 5:** Amends AS 43.20.043(i)(1), Gas exploration and development tax credit. Deletes "if the reserves produce gas for sale and delivery".

**Section 6:** Amends uncodified law enacted by Section 3, Chapter 61, SLA 2003. Adds ch. 61, SLA 2003 as amended by Section 7 of this bill. Also amends the carry forward of the tax xcredit from 2017 to 2024.

**Section 7:** Amends uncodified law enacted by Section 5, Chapter 61, SLA 2003. Adds ch. 61, SLA 2003 to take effect on January 1, 2020 instead of 2013.

**Section 8:** Immediate effective date.

Sec. 43.20.043. Gas exploration and development tax credit.

(a) Subject to the terms and conditions of this section, and in addition to any other credit authorized to the taxpayer by this chapter, a taxpayer that is an operator or working interest owner directly engaging in the exploration for and development of gas may apply as a credit against the state tax liability that may be imposed on the taxpayer under this chapter, for a tax year beginning after December 31, 2002,

(1) 10 percent of the taxpayer's qualified capital investment; and

(2) 10 percent of the annual cost incurred by the taxpayer for qualified services in the state during each tax year for which a credit is allowable for a qualified capital investment under (1) of this subsection.

(b) Expenditures qualifying for the taxpayer's qualified investment credit under (a)(1) of this section must be

(1) cash expenditures or binding payment agreements entered into after June 30, 2003; and

(2) made for assets first placed in service in the state in or before the tax year in which the credit is claimed through the date the reserves produce gas for sale and delivery; for purposes of this paragraph, "placed in service in the state" means that the first use of the qualified investment is in this state; if the property on which the claim of the credit is based has been used elsewhere in the tax year of acquisition and is brought to this state during that year or a subsequent year, the property does not qualify for the investment credit.

(c) The credit per tax year allowed by (a) of this section may not exceed 50 percent of the taxpayer's total tax liability under this chapter, but shall be calculated before the application of any other credits allowed under this chapter. An unused portion of the credit for the tax year

(1) may be carried forward into one or more of the following tax years, except that the unused credit from one tax year may not be carried forward for more than five following tax years;

(2) shall be applied to the taxpayer's tax liability under this chapter during the following tax year before allowance of a credit allowed by (a) of this section for that following tax year.

(d) To obtain the credit allowed by this section, the taxpayer shall, with the taxpayer's tax return, submit, on a form prescribed by the department, information that demonstrates that the taxpayer is eligible for the credit and evidence of the expenses that are the basis of the claim of the credit. The taxpayer has the burden of demonstrating compliance with the requirements of this section to entitle the taxpayer to the claim of and the amount of the credit.

(e) A taxpayer entitled to a credit under this section

(1) may not convey, assign, or transfer the credit to another taxpayer or business entity unless the conveyance, assignment, or transfer of the credit is part of the conveyance, assignment, or transfer of the taxpayer's business;

(2) forfeits the credit to which the taxpayer is entitled during the tax year and any carryover of it under (c) of this section, but does not forfeit the portion of the credit that accrued in a previous taxable year that may be carried over under (c) of this section, if the taxpayer

(A) disposes of the qualified capital investment;

(B) takes the qualified investment out of service; or

(C) transfers the qualified investment out of this state.

(f) A taxpayer is not entitled to a credit under this section for expenditures that are made or incurred for the qualified capital investment or for qualified services made for exploration and development of gas that occur in the area of Alaska lying north of 68 degrees North latitude or that are made or incurred to transport gas from reserves located in the area of Alaska lying north of 68 degrees North latitude.

(g) A taxpayer who obtains a credit under this section may not claim a tax credit or royalty modification provided for under any other title. However, a taxpayer may, at the taxpayer's election, forgo a credit under this section in order to continue to qualify for a credit provided for in another title.

(h) For purposes of determining allowable credits under this section, the department shall allow only expenditures and payments that are not inconsistent with the expenditures authorized under 26 U.S.C. (Internal Revenue Code) for exploration and development of natural resources.

(i) In this section,

(1) "qualified capital investment" means a cash expenditure or binding payment agreement, as described in (b)(1) of this section, for real property or tangible personal property used in this state in the exploration and development of gas reserves in a gas reservoir for which there has not been commercial production if the reserves produce gas for sale and delivery; in this paragraph, "property" includes

(A) property used in the operation or maintenance of facilities for exploration or development of gas;

(B) property that is placed in use under a capitalized lease or an operating lease; and

(C) the following property used for the exploration and development of gas:

(i) machinery, appliances, supplies, and equipment;

(ii) drilling rigs, wells, gathering lines and transmission lines, pumping stations, compressor stations, power plants, topping plants, and processing units;

(iii) roads, docks and other port facilities, and helicopter pads;

(iv) maintenance equipment and facilities, and maintenance camps and other related facilities; and

(v) communications facilities owned by a person whose principal business in the state is the exploration for or development of gas and whose operation of the communications facilities directly relates to the conduct of that business;

(2) "qualified services"

(A) means expenditures for labor, seismic, and other services that are directly applicable to a qualified capital investment;

(B) does not include lease operating expenses.

History -

(Sec. 1 ch 61 SLA 2003)

Postponed Repeal Effective Date -

Delayed repeal of section. - Under Sec. 2 and 5, ch. 61, SLA 2003, this section is repealed January 1, 2013.

Cross References -

For provision relating to the manner of handling the unused portion of the tax credit as a carry-forward during the period on or after January 1, 2013, and until December 31, 2017, see Sec. 3, ch. 61, SLA 2003, in the 2003 Temporary and Special Acts. For obligation of the Department of Revenue to prepare a report to the legislature on the effect of the tax credit authorized by this section, and to present the report at the beginning of the First Regular Session of the 26th Alaska Legislature, see Sec. 4, ch. 61, SLA 2003, in the 2003 Temporary and Special Acts.

Effective Date Notes -

Section 6, ch. 61, SLA 2003 makes this section effective June 12, 2003, in accordance with AS 01.10.070(c).

-

# Alaska State Legislature

State Capitol, Room 208  
Juneau, Alaska 99801-1182  
Phone: 907-465-3779  
Fax: 907-465-2833  
Toll Free: 800-469-3779




145 Main St. Loop  
Second Floor  
Kenai, Alaska 99611  
Phone: 907-283-7223  
Fax: 907-283-7184

## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

### MEMORANDUM

TO: Representative Craig Johnson, Co-Chair  
Representative Mark Neuman, Co-Chair  
House Resources Committee

FROM: Representative Mike Chenault   
Speaker of the House

DATE: February 16, 2010

RE: Request for Hearing-House Bill 229

Please consider this request to schedule House Bill 229: Gas Exploration\Development Tax Credit, before your committee at your earliest possible convenience.

Your committee aides will receive the back-up for this bill shortly.

Thank you for your consideration of my request.