

HB

263

<TARGET><BILL>HB 263</BILL><SUBJECT>HB
263</SUBJECT><COMM>HRES27</COMM></TARGET>

27-LS1053\E
Bullock
2/17/12

CS FOR HOUSE BILL NO. 263()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GARDNER, GARA, TUCK, AND KAWASAKI, Kerttula

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to information concerning oil and gas taxes, including information**
2 **about expenditures that must be provided in order to claim an oil and gas production**
3 **tax credit for those expenditures, and relating to the disclosure and publication of that**
4 **information; and providing for an effective date."**

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

6 *** Section 1.** AS 43.55.030(a) is amended to read:

7 (a) A producer that produces oil or gas from a lease or property in the state
8 during a calendar year, whether or not any tax payment is due under AS 43.55.020(a)
9 for that oil or gas, shall file with the department on March 31 of the following year a
10 statement, under oath, in a form prescribed by the department, giving, with other
11 information required **by the department under a regulation adopted by the**
12 **department**, the following:

13 (1) a description of each lease or property from which oil or gas was
14 produced, by name, legal description, lease number, or accounting codes assigned by

1 the department;

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

4 (3) the gross amount of oil and the gross amount of gas produced from
5 each lease or property, and the percentage of the gross amount of oil and gas owned by
6 the producer;

7 (4) the gross value at the point of production of the oil and of the gas
8 produced from each lease or property owned by the producer and the costs of
9 transportation of the oil and gas;

10 (5) the name of the first purchaser and the price received for the oil and
11 for the gas, unless relieved from this requirement in whole or in part by the
12 department;

13 (6) the producer's qualified capital expenditures, as defined in
14 AS 43.55.023, other lease expenditures under AS 43.55.165, and adjustments or other
15 payments or credits under AS 43.55.170;

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

17 (8) any claims for tax credits to be applied; [AND]

18 (9) calculations showing the amounts, if any, that were or are due
19 under AS 43.55.020(a) and interest on any underpayment or overpayment; and

20 (10) for each expenditure that is the basis for a credit claimed
21 under AS 43.55.023 or 43.55.025, a description of the expenditure, a detailed
22 description of the purpose of the expenditure, and a description of the unit, lease,
23 or property for which the expenditure was incurred; notwithstanding
24 AS 40.25.100(a) and AS 43.05.230(a), information submitted under this
25 paragraph shall be published by the department on the Internet and shall be
26 disclosed to the legislature in a report submitted within 10 days after the
27 convening of the next regular legislative session following the date a statement is
28 filed under this section.

29 * Sec. 2. AS 43.55.030(e) is amended to read:

30 (e) An explorer or producer that incurs a lease expenditure under
31 AS 43.55.165 or receives a payment or credit under AS 43.55.170 during a calendar

1 year but does not produce oil or gas from a lease or property in the state during the
2 calendar year shall file with the department on March 31 of the following year a
3 statement, under oath, in a form prescribed by the department, giving, with other
4 information required **by the department under a regulation adopted by the**
5 **department**, the following:

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

9 (2) if the explorer or producer receives a payment or credit under
10 AS 43.55.170, calculations showing whether the explorer or producer is liable for a
11 tax under AS 43.55.160(d) or 43.55.170(b) and, if so, the amount; **and**

12 **(3) for each expenditure that is the basis for a credit claimed under**
13 **AS 43.55.023 or 43.55.025, a description of the expenditure, a detailed description**
14 **of the purpose of the expenditure, and a description of the unit, lease, or property**
15 **for which the expenditure was incurred; notwithstanding AS 40.25.100(a) and**
16 **AS 43.05.230(a), information submitted under this paragraph shall be published**
17 **by the department on the Internet and shall be disclosed to the legislature in a**
18 **report submitted within 10 days after the convening of the next regular legislative**
19 **session following the date a statement is filed under this section.**

20 * Sec. 3. This Act takes effect July 1, 2012.

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Representative Berta Gardner

House District 24

Changes in CS Ver E

Page 2, line 22: added "unit" to lease or property

Page 2, line 24: AS 40.25.100(a) to remove any possible public disclosure prohibitions

Page 2, line 25: changed "may" to "shall" and removed "disclosed to the public" and inserted "be published by the department on the internet"

Page 3, line 14: added "unit" to lease or property

Page 3, line 15: AS 40.25.100(a) to remove any possible public disclosure prohibitions

Page 3, line 17: changed "may" to "shall" and removed "disclosed to the public" and inserted "be published by the department on the internet"

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Sectional Analysis CSHB 263 Ver. E

Section 1: Amends 43.55.030(a), requiring that producers who will be applying a tax credit against their production tax liability to disclose what they did, where they did it and the purpose of that expenditure. It requires the Department of Revenue to report the information to the legislature 10 days after the start of session and publish it on the internet.

Section 2: Amends 43.55.030(e), requiring that producers and explorers who do not have a production tax liability, but will be applying for tax credit certificates, to disclose what they did, where they did it and the purpose of that expenditure. It requires the Department of Revenue to report the information to the legislature 10 days after the start of session and publish it on the internet.

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Representative Gardner, Gara, Tuck, and Kawasaki

Sponsor Statement

House Bill 263 – Production Tax Credit; Disclosures

Since Alaska went to a net profits tax on oil and gas, Alaska has invested \$4 billion in tax credits to explorers and producers. In so doing, our intention has been to have some skin in the game by buying down the risk for other investors, and ultimately, to recover our investment through increased oil in the pipeline. Is our \$4 billion investment heading toward success, or are we paying for routine maintenance or for investments which would have been made without our participation?

In any business partnership, all parties need to know the return on their investments, yet after five years of investments, Alaskans do not know with any certainty what we have bought with our significant investment. To hold ourselves and the industry accountable, Alaskans need to have public descriptions of where our money is going.

This legislation will provide the state with information on our investments. It asks tax payers who file for tax credits, to agree to release a description, the purpose, and the general location of the expense as a condition of participation in the credit program.

Assessment of Alaska's oil and gas exploration credits to determine the effectiveness is vital information. If the State is going to continue to dramatically buy down any oil companies risk in exploration and production, we need to be sure our investments are going to efforts that further development in Alaska and put more oil in the pipeline. Having this information will allow us to understand the strengths and weaknesses of the system in order to effectively incentivize increased production.

Please join us in passage of this legislation. If you have any questions, please contact Representative Gardner's staff, Noah Hanson, at 465-4068 or Noah_Hanson@legis.state.ak.us.

LEGAL SERVICES

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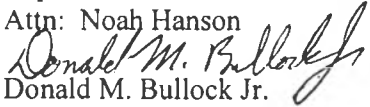
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MEMORANDUM

February 16, 2012

SUBJECT: Confidentiality of information that would be available to the public under CSHB 263() (Work Order No. 27-LS1053\D)

TO: Representative Berta Gardner
Attn: Noah Hanson

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked whether the amendment to AS 43.55.030(a) in sec. 1 of the above-referenced bill and the amendment to AS 43.55.030(e) in sec. 2 of the above-referenced bill violate a prohibition against the disclosure of the information.

The type of information that would be disclosed under the bill is currently confidential under AS 43.05.230(a). That subsection reads as follows:

- (a) It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title, except
- (1) in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title;
 - (2) in connection with official investigations or proceedings of the child support enforcement agency, whether judicial or administrative, involving child support obligations imposed or imposable under AS 25 or AS 47;
 - (3) as provided in AS 38.05.036 pertaining to audit functions of the Department of Natural Resources;
 - (4) as provided in AS 43.05.405 - 43.05.499; and
 - (5) as otherwise provided in this section or AS 43.55.890.

In your bill, the new language in AS 43.55.030(a)(10) in sec. 1 and in AS 43.55.030(e) in sec. 2 each contain the phrase, "notwithstanding AS 43.05.230(a)," which means that the information may be disclosed by the Department of Revenue despite a provision that would otherwise protect the information. This allows the Department of Revenue to disclose the information without regard to AS 43.05.230(a).

Representative Berta Gardner

February 16, 2012

Page 2

While the language in the bill removes the disclosure prohibition under AS 43.05.230(a), AS 40.25.100(a) also shields tax information from the public. That subsection reads as follows:

(a) Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except as provided in AS 43.05.230(i) or for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation, administrative adjudication under AS 43.05.405 - 43.05.499, or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information that may assist in the collection of delinquent taxes, or prohibit the publication of records, proceedings, and decisions under AS 43.05.405 - 43.05.499.

In the enclosed CSHB 263(), I added AS 40.25.100(a) to precede the citation to AS 43.05.230(a) so that the disclosure required in the bill is not subject to either of the two statutes.

If I may be of further assistance, please advise.

DMB:ljw
12-132.ljw

Enclosure



Production Tax Credits



Total Production Tax Credit Impact through FY 2012 (\$M)

	<u>Pre- 2008</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011*</u>	<u>2012*</u>	<u>Total</u>
Tax Credit Certificates	116	131	308	361	458	133	1,507
Credits Applied Against Production Tax Liability	557	378	333	412	405	400	2,485
Total by Year	673	509	641	773	863	533	3,992

*Estimated pending final true-ups

Data Transparency

- **Relative to other regimes Alaska is handicapped in its decision making by the small amount of either confidential or reliable public data on energy operations**

- **Consequently, the producers are the only ones that can provide the legislators with the true picture**
 - Where is the money being spent?
 - What is the upside potential?
 - Why isn't more investment occurring?
 - With HB 110, will they now be investing for the upside ?

Access to Information

- Relevant Statutes
- Department Will Not Use Subpoena Power
- The Department Overuses Taxpayer Confidential Designations
- Department Will Not Agree to a Joint Administrative Agreement

Access to Information

491. SARB observed the following in its Certificate of Determination for the 2007 assessment year:

The Board also found that the Owners failed to take advantage of the opportunity to provide the Division with persuasive data to challenge the reserves estimates or throughput projections used by the Division if the Owners have such data. The Board found that the Owners chose not to the [sic] share information that the Owners and their parent companies possess regarding throughput and proven reserves with the Division or the Board and instead chose to present evidence and testimony from outside experts who did not have access to the information the Owners possess that was not already in the public record, and who lacked adequate direct experience with, or expertise about, the TAPS or the Alaska North Slope reserves.

Gleason Decision ¶ 491

Access to Information

5. AS 43.56.080 grants the Division certain investigative powers when assessing AS 43.56 properties, including the power to “enter any premise necessary for the investigation during reasonable hours,” to “examine property and appropriate records,” and to compel owner representatives “to appear for examination under oath by the department.” There was no persuasive evidence presented at the trial de novo that the Division has ever exercised these powers with respect to the valuation of TAPS.

Gleason Decision ¶ 5

Access to Information

6. The Division broadly interprets what it considers “taxpayer confidential” information under applicable statutes and will not disclose such information to the Municipalities specifically or to the public generally. The Division considers all information that it receives from a taxpayer as “taxpayer confidential,” even if it does not contain the particularities of a taxpayer’s business affairs and is obtainable from the public domain. As a result, the Division did not provide the Owners’ new replacement cost study by Stantec Consulting, Inc. (“Stantec”) to the Municipalities.

Gleason Decision ¶ 6

Access to Information

7. AS 43.56.060(g) provides that “[t]he department may enter into agreements with a municipality for the cooperative or joint administration of the assessing authority conferred on the department by this section.” The North Slope Borough previously had such an agreement with the Department. The City of Valdez and Fairbanks North Star Borough have never been parties to joint assessment agreements with the Department.

Gleason Decision ¶ 7

Access to Information

8. In its 2010 decision, SARB expressed its concerns regarding the Division's assessment practices:

The Board believes that it is time for the Division to address the problems created by the way it handles taxpayer confidential information in the assessment process. The Division's failure to provide interested parties with the information on which the assessment was made in time to allow those parties meaningful input in the determination of the property's assessed value, before that determination is subject to limited review of an appeal before the Board, has the potential to throw the fundamental fairness of the AS 43.56 assessment process into question. The Board believes that, due to the Division's current practices with regard to the use of taxpayer confidential information in its AS 43.56 assessments, that process is close to broken and is headed in the wrong direction.

This Court concurs with the Board's observations in this regard.

Gleason Decision ¶ 8

Access to Information

Information at DOR Level

- History of TAPS Valuation
- DOR Process
- Access to Taxpayer Information
- Treatment of Taxpayer Information
- Consequence of Lack of Access to Information

Access to Information

History of TAPS Valuation

- DOR relying on TSM based rates lead the assessments falling from over \$8 billion in the mid-1980s to \$2.75 billion in 2001 [Gleason Decision ¶ 30]
- For decades the valuation of TAPS was a negotiated process that largely excluded the Municipalities
- The Municipalities fully engaged the process for the 2005 assessment

Access to Information

Observation About DOR's Process

- Key DOR staff are fair, dedicated, and highly competent
- The SARB has also been balanced and diligent
- However the DOR process—as related to information relied on in the taxation process—is close to broken. [Gleason Decision ¶ 8]

Access to Information

Access to Confidential Information

- Taxing authorities typically compel information
 - DOR can subpoena information, depose taxpayer representatives, and investigate property and records [AS 43.56.080; AS 29.45.130; AS 43.55.040(a)]
- DOR policy is to work cooperatively with industry, so it does not exercise these powers [Gleason Decision ¶ 8]
- Thus, DOR relies on information that a taxpayer volunteers or that is publicly available

Access to Information

Taxpayer Information

- The Alaska Public Records Act, AS 40.25.110, requires State documents to be subject to public examination
- Exception exists under AS 40.25.100(a) for tax information “that discloses the particulars of the business or affairs of a taxpayer” in which case the “information shall be kept confidential except when . . . required in an official investigation [or proceeding]”
- AS 43.05.230(a) also makes it unlawful to “divulge the amount of income or the particulars set out or disclosed in a report or return” except in conjunction with “investigations or proceedings”

Access to Information

Taxpayer Information

DOR narrowly reads taxpayer confidentiality statutes, denying public access to:

- All information provided by taxpayers
 - Non-sensitive correspondence, hypothetical studies, publicly available information, etc.
- Information provided for its production forecasting, which is a budgeting function [2007-2009 Trial Tr. 8813-14, Tr. 10874-877]
- The Municipalities
 - AS 43.56.060(g) allows for joint administration of taxes
 - North Slope Borough had such an agreement until recently

Access to Information

Consequence of Information Access

- Industry acts to prevent the best information from harming its position on taxes
 - Low flow documents
 - Royalty trust statements removed
 - BP Pipelines no longer participating in reserves function [2007-2009 Trial Tr. 11480]
 - As a matter of policy DOR does not compel the production of useful information
- DOR does not make publicly available taxpayer information in its possession
- Result–DOR and Legislature do not have access to information necessary to be informed about oil and gas tax issues in Alaska

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House District 24

Disclosure Requirements for Film Tax Credits

- Name of Tax Payer
- Project Title
- Amount of Alaska expenditure
- Production Schedule
- Production Type
- Communities where expenditures occurred
- Wages paid to residents and non-residents
- Costs in instate Alaska shipping, shipping to Alaska, location fees, facility rentals, equipment rentals, services, food and lodging
- Amount of tax credit that is rewarded

Total Amount paid in tax credits: **\$24,329,051.20**
2 ½ fiscal years