

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2947

# Southside Residential Area

- o 450 residential lots ranging from 1-5 acres, lying within development pods separated by large open space areas developed over 25 years
- o Strict design guidelines will ensure an appropriate standard of architecture and landscaping
- o All homes and other buildings will be constructed to blend within the natural environment
- o Nearly all lots will border extensive trail system, connecting residents to natural environment and direct access to unique amenities
- o Southside development plan provides 68% open space overall
- o Primary access across Little Susitna bridge



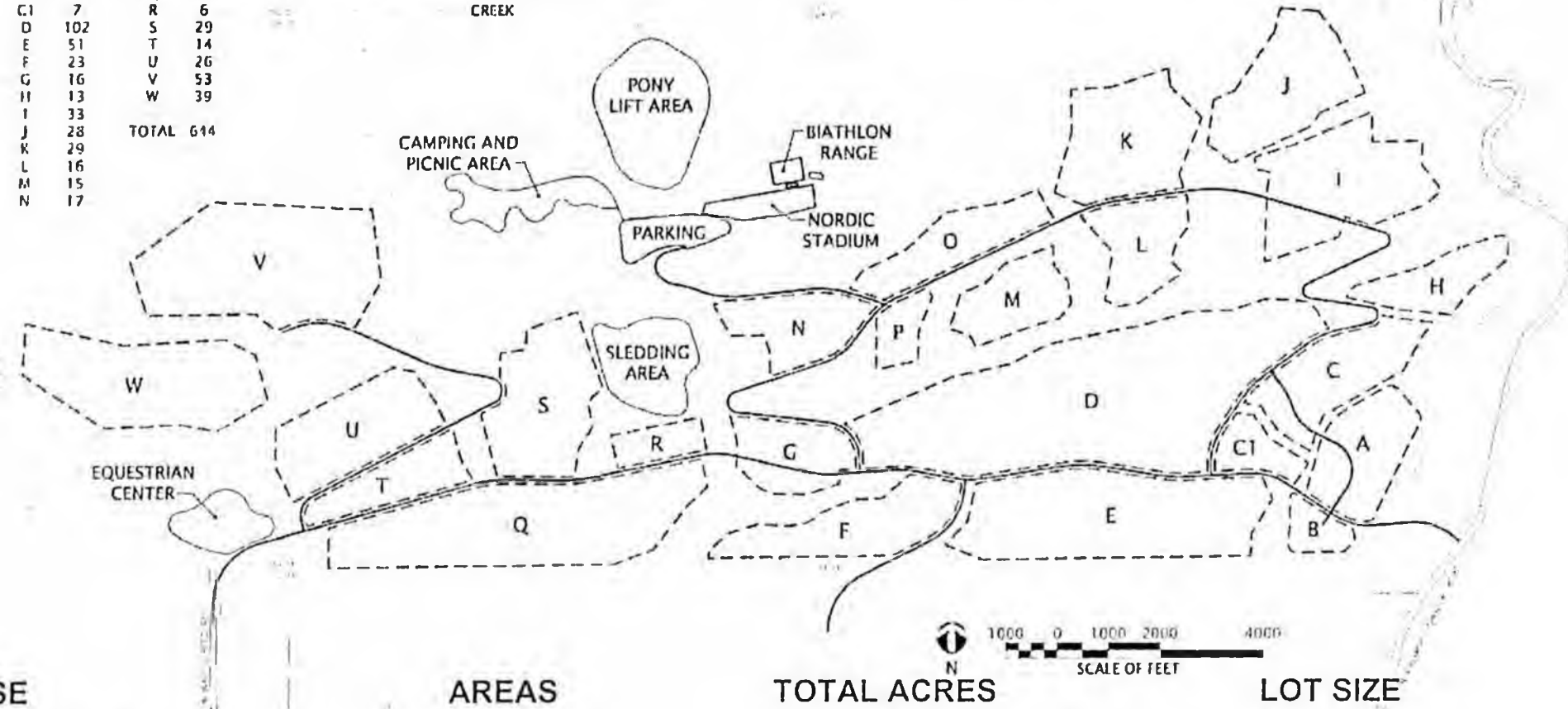
# Southside Development Plan

## DEVELOPMENT AREA SUMMARY

AREA	ACRES	AREA	ACRES
A	20	O	17
B	5	P	6
C	23	Q	56
C-1	7	R	6
D	102	S	29
E	51	T	14
F	23	U	26
G	16	V	53
H	13	W	39
I	33		
J	28	TOTAL	644
K	29		
L	16		
M	15		
N	17		

## LEGEND

- DEVELOPMENT AREA BOUNDARY
- COLLECTOR ROAD
- ~~~~~ CREEK EASEMENT
- ~~~~~ CREEK



USE	AREAS	TOTAL ACRES	LOT SIZE
Village Center	A,B	25	NA
Multi-Family	C-1	7	6,000 SF
Single Family	C,D,E,F,G,Q,R,S,T	320	40,000 SF
Single Family Large Lot	H,L,M,N,O,P	84	2 Acre
Single Family Estate Lot	I,J,K,V	143	5 Acre
Single Family Equestrian	U,W	65	2 Acre
<b>TOTAL</b>		<b>644</b>	

# Nordic Ski Trail System with Stadium & Chalet

## **Nordic Ski Trail System:**

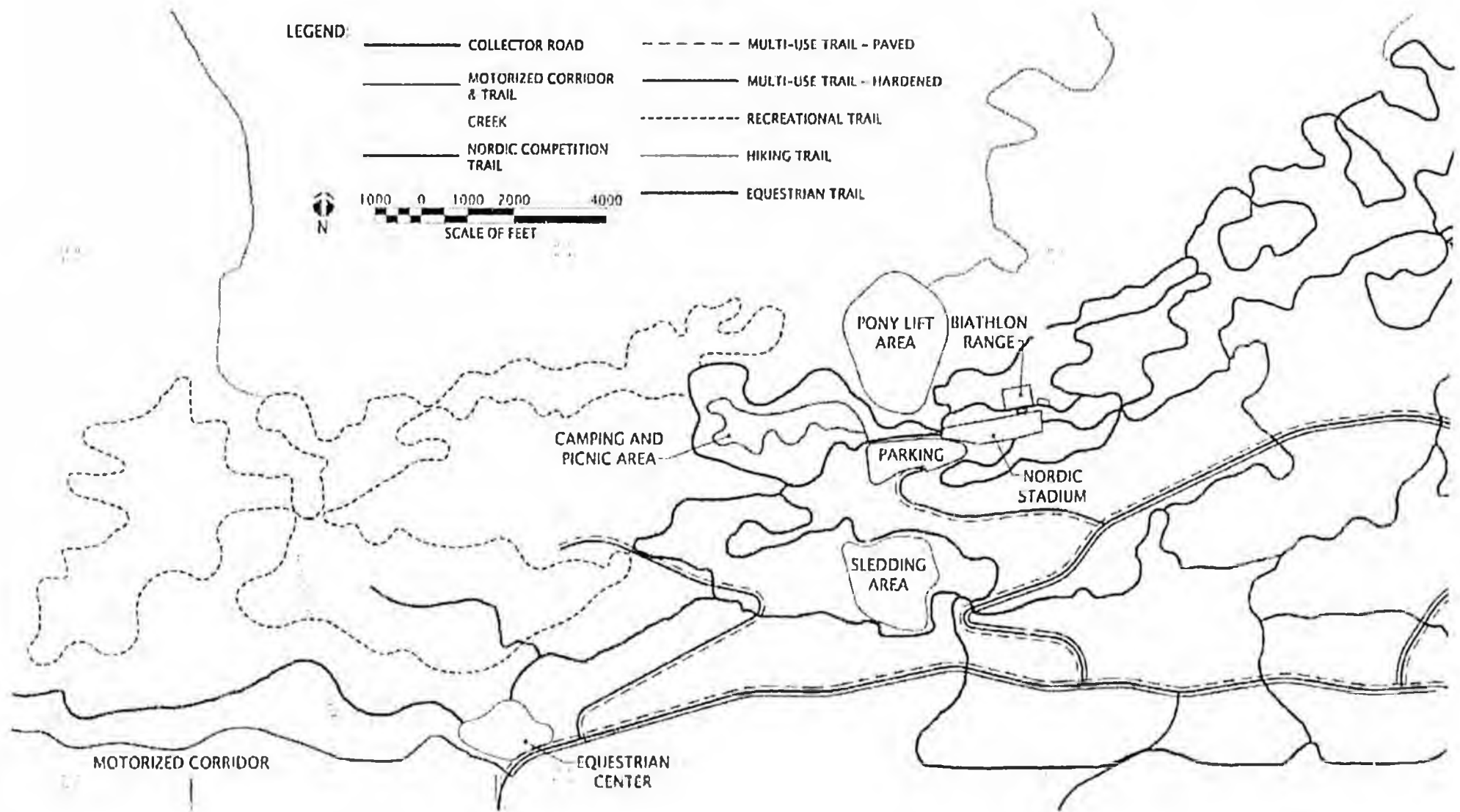
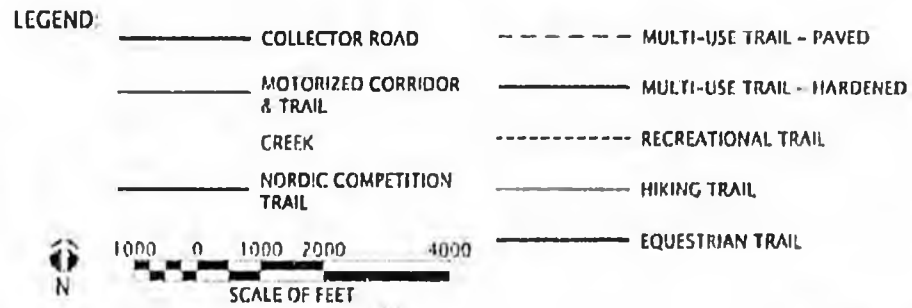
*(designed by Olympian Bill Spencer)*

- o Extensive trail system for a variety of year-round uses
- o Trails designed to host competitive races at the high school, collegiate, and international levels
- o Design will utilize bypasses and cutoffs creating less demanding loops for recreational use
- o Stadium will provide base for recreational trails and start/finish area for competitive events

- o Nordic Competition Trails
- o Recreational Trails
- o Multi-Use Trails
- o Motorized Trails
- o Hiking Trails
- o Equestrian Center & Trails
- o Sledding Hill



# Southside Area Trail System



**HB**

**500**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
MAY 01 2006  
SENATE FINANCE COMMITTEE  
*Rule*

DATE: 4/22/06

FURTHER:

DATE TURNED IN TO OFFICE: 5/1/06

Finance Committee considered

HOUSE BILL NO. 500

## HB 500 BONDING AUTHORITY FOR HATCHER PASS

"An Act amending the principal amount of bonds that may be issued by the Alaska Industrial Development and Export Authority for the purpose of financing the development of Hatcher Pass."

and recommends:

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

**CS Senate Bill:**  
 Same Title  
 New Title

**SCS House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#
DCF	4/14/06			✓	

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS		DO PASS	DO NOT PASS	NO REC	AMEND
Hoffman	<i>[Signature]</i>			✓	
Olson	<i>[Signature]</i>			✓	
Dyson	<i>[Signature]</i>	✓			
Stedman	<i>[Signature]</i>	✓			
Willcen	COCHAIR: <i>[Signature]</i>	✓			
Green	COCHAIR: <i>[Signature]</i>	✓			

# FISCAL NOTE

**REPORTED OUT**  
**MAY 01 2006**  
 SENATE FINANCE COMMITTEE

STATE OF ALASKA  
 2006 LEGISLATIVE SESSION

Fiscal Note Number: 1  
 Bill Version: HB 500  
 (H) Publish Date: 4/18/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Bonding Authority for Hatcher Pass RDU AIDEA (125)  
 Component AIDEA  
 Sponsor House Finance by Request  
 Requester House Finance Component No. 1234

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

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

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill provides AIDEA bonding authorization to finance the development of Hatcher Pass. The principal amount of the bonds and other financing provided by the authority may not exceed \$25 million. This bill replaces AIDEA's existing bonding authorization of \$15 million to finance the construction and improvement of phase 1 of the Hatcher Pass Ski Resort.

Prior to issuing bonds, AIDEA will be required to conduct a feasibility, market and risk analysis of the project as outlined in AS 44.88.095(c). The bond authorization has no fiscal impact on AIDEA operations.

Prepared by: Sara Fisher-Goad, Financial Analyst Phone 907-269-4623  
 Division Alaska Industrial Development and Export Authority Date/Time 4/14/06 11:52 AM  
 Approved by: William C. Noll, Commissioner Date 4/14/2006  
 Agency Commerce, Community, and Economic Development

# ALASKA STATE LEGISLATURE

**Vice Chair:**  
House Finance Committee

**Chair:**  
House Finance Subcommittees for:  
Department of Public Safety  
Department of Law



**Session:**  
Alaska State Capitol  
Juneau, AK 99801-1182  
Phone: (907) 465-4958  
Fax: (907) 465-4928

**Interim:**  
PO Box 464  
Chugiak, AK 99567

## BILL STOLTZE STATE REPRESENTATIVE

Representative\_Bill\_Stoltze@legis.state.ak.us

### House Bill 500

#### Bonding Authority for Hatcher Pass

*"An act amending the principal amount of bonds that may be issued by the Alaska Industrial Development and Export Authority for the purposes of financing the development of Hatcher Pass."*

The Matanuska-Susitna Borough has been working with JL Properties, Inc. and the Alaska Industrial Development and Export Authority in examining the potential for a Hatcher Pass Development Project. House Bill 500 will allow them to take the next step in discussing the financing for this project.

The provisions of HB 500:

- Amend the current language so that AIDEA may issue bonds or provide other financing for the development of Hatcher Pass, not just the construction and improvement of phase 1 of a ski resort.
- Increase the principal amount of the bonds and other financing AIDEA may provide from \$15 million to \$25 million.

I ask for your consideration and support of HB 500.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP  
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK



## MATANUSKA-SUSITNA BOROUGH

### Borough Manager

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 745-9688 • Fax (907) 745-9669

[jduffy@matsugov.us](mailto:jduffy@matsugov.us)

April 3, 2006

The Honorable Bill Stoltze  
Alaska State House of Representatives  
State Capitol, Room 421  
Juneau, AK 99801-1182

Dear Representative Stoltze:

As you may know, on October 18, 2005, the Matanuska-Susitna Borough Assembly unanimously approved AM No. 05-181 to authorize the Borough Manager to complete negotiations with JL Properties, Inc., on the Development Agreement for the Hatcher Pass Recreational Development Project. The Hatcher Pass development proposal requires legislation that allows AIDEA to participate under its Development Finance Program.

We believe that the prudent development of the Hatcher Pass area will create significant economic development benefits and recreational opportunities for the residents of the Matanuska-Susitna Borough. We respectfully request your support and assistance in forwarding legislation, which will allow us to proceed with the development of a definitive plan for this important Borough project.

Sincerely,

  
John Duffy  
Borough Manager

JD:ds

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MATANUSKA-SUSITNA BOROUGH INFORMATION MEMORANDUM IM No. 06-140

SUBJECT: Supporting the adoption of legislation to expand AIDEA financing authorization to fully participate in the Hatcher Pass Ski Area Project.

AGENDA OF: April 18, 2006

ASSEMBLY ACTION: RS 06-057 was approved as amended. Assemblymember Colberg opposed. 4/18/06 Lem

MANAGER RECOMMENDATION: Present to the assembly for consideration.

APPROVED BY JOHN DUFFY, BOROUGH MANAGER: [Signature]

Route To:	Department/Individual	Initials	Remarks
	Originator	M. J. Colver	
	Public Works Director		
	Planning and Land Use Director		
	Community Development Director		
	Emergency Services Director		
	Finance Director		
1	Borough Attorney	CJA	4/10/06
2	Borough Clerk	M. Lem	4/10/06

ATTACHMENT(S): Fiscal Note: Yes \_\_\_; No X  
Resolution Serial No. 06-057

SUMMARY STATEMENT: The attached sponsored legislation is being proposed at the request of Assemblymember Colver in support of adopting legislation to expand AIDEA financing authorization to fully participate in the Hatcher Pass ski area project.

RECOMMENDATION OF ADMINISTRATION: Present for Assembly consideration.

Sponsor: Assemblymember Colver  
Amended: 04/18/06  
Adopted: 04/18/06

MATANUSKA-SUSITNA BOROUGH  
RESOLUTION SERIAL NO. 06-057 (AM)

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY SUPPORTING THE ADOPTION OF LEGISLATION TO EXPAND THE ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY'S (AIDEA) FINANCING AUTHORIZATION TO FULLY PARTICIPATE IN THE HATCHER PASS SKI AREA PROJECT.

WHEREAS, the Hatcher Pass ski area project is an economic development, tourism, and recreational goal of the Matanuska-Susitna Borough; and

WHEREAS, the Hatcher Pass ski area will create long term business and employment opportunities within the Matanuska-Susitna Borough and South-central Alaska; and

WHEREAS, the Borough, through a competitive process, selected a private sector firm, JL Properties, to develop the Hatcher Pass ski area project; and

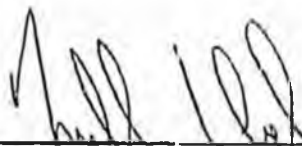
WHEREAS, the proposed financing plan has been prepared and it includes funding from the JL Properties, the Borough, and the Alaska Industrial Development and Export Authority (AIDEA); and

WHEREAS, the AIDEA is seeking, through new legislation, the authority to participate in the Hatcher Pass ski area project in the amount of \$25 million, increasing the level presently authorized; and

WHEREAS, AIDEA's participation in the Hatcher Pass ski area project is critical to the ultimate success of the project.

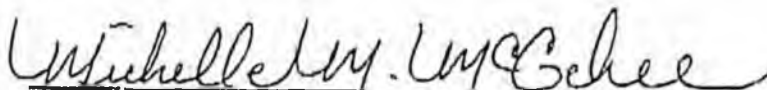
NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Assembly supports the adoption of House Bill 500 to authorize AIDEA to finance up to \$25 million, to fully participate in the Hatcher Pass ski area project.

ADOPTED by the Matanuska-Susitna Borough Assembly this 18 day of April, 2006.



TIMOTHY L. ANDERSON, Borough Mayor

ATTEST:

  
MICHELLE M. MCGEHEE, CMC, Borough Clerk

(SEAL)

YES: Woods, Bettine, Colver, and Vehrs

NO: Colberg

**HB**

**2003**

**HFIN**

**FILE**

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# Greenberg Traurig

## Memorandum

TO: Joe Balash

FROM: Phillip C. Gildan

DATE: May 23, 2006

RE: Proposed Alaska Natural Gas Pipeline Corporation Legislation

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At your request we have reviewed the proposed Alaska Natural Gas Pipeline Corporation Legislation (the "ANGPC Act") attached as Appendix K to the Preliminary Findings and Determination issued by the State of Alaska Department of Revenue, dated May 10, 2006 (the "FIF"). This memorandum provides a synopsis of the ANGPC Act, comments as to the ANGPC Act's provisions in relation to the proposed Alaska Stranded Gas Fiscal Contract between the State of Alaska and BP Exploration (Alaska), Inc., ConocoPhillips Alaska, Inc. and ExxonMobil Alaska Production, Inc. (the "ASGF Contract"), and suggested revisions/additions to the ANGPC Act. Since the Legislature has not yet been provided the proposed Limited Liability Company Agreement for the proposed Pipeline Project Mainline Limited Liability Company Entity ("Mainline LLC") (or Limited Liability Company Agreements for the other proposed Pipeline Project related entities ("Ancillary LLCs")), we can not comment on the ANGPC Act as it relates to such agreements. When we receive the proposed Limited Liability Company Agreements we will update this memorandum.

### Synopsis of ANGPC Act

The ANGPC Act creates the Alaska Natural Gas Pipeline Corporation (the "ANGPC") as a public corporate entity to act as the State's surrogate to acquire the membership (ownership) interests in the Mainline LLC and Ancillary LLCs, as called for in the ASGF Contract, and to exercise the State's rights and meet the State's obligations as a member in each of those respective LLCs.

In its form and in most of its material terms, the ANGPC Act mirrors other Alaska public corporations established by the Legislature to execute Legislative project goals and programs. (See, for example, the Alaska Natural Gas Development Authority, AS Chapter 41.41; the Alaska Energy Authority, AS Chapter 44.83; the Alaska Industrial Development and Export Authority, AS Chapter 44.88; and the Alaska Municipal Bond Bank Authority, AS Chapter 65).

As with these other public corporations, the ANGPC will be a separate governmental entity, with delegated governmental powers and responsibilities. While an independent governmental entity, it will have no home rule governmental powers, but only those accorded it in the ANGPC Act. The Act incorporates standard governmental instrumentality language to bring the ANGPC within the broad cloak of governmental privilege and protection afforded to government instrumentalities (for example, federal, state and local tax-exempt status, access to municipal bond market and federal tax-exempt financing).

The ANGPC Act's corporate stricture, procedural and administrative provisions are standard and unremarkable (for example, appointment and removal of board members, board meeting requirements, board compensation).

Two areas of the ANGPC Act diverge from the generic public corporation mold, and should be noted. One, the ANGPC is essentially exempted from public meeting requirements (AS 41.42.030(d) and AS 41.42.530). This represents a policy decision, with pros relative to the corporation acting in a proprietary capacity, and cons relative to diminished transparency of the corporation's actions. Two, the ANGPC (and other Pipeline LLC member/owners) are exempted from the public policy against indemnification agreements (AS 45.45.905). This also represents a policy decision, as discussed by the administration during its briefing of the legislature.

Finally, somewhat unusually for Public Corporation Acts, the ANGPC Act delegates to the ANGPC the power to establish its own subsidiary public corporations (AS 41.42.220). As noted below, this provision relates to the ASGF Contract and the extra-territorial aspects of the Pipeline project. Such a power can be a useful corporate tool to segregate liability and fiscal accountability in the appropriate circumstances. Suggested revisions to AS 41.42.200 are set forth below to better implement the purpose of such a structural tool and provide enhanced accountability for such entities, if created. Note, the creation of subsidiaries is not mandated, but merely authorized as the board of the ANGPC sees fit.

#### Comments Relative to the ASGF Contract

The ASGF Contract delegates the implementation of the Project and a material segment of the parties' agreements to the Mainline Entity (and affiliated Project entities). The State's ownership participation in the Mainline Entity and exercise of its ownership rights is, in turn, effectuated through the creation of the ANGPC, as proposed in the ANGPC Act. Under the ASGF Contract program structure, implementing AS 43.82, the Stranded Gas Development Act, the Mainline Entity and the Producers are the dog and the ANGPC is its tail. Recognizing this minority position and the lack of expectation that the tail will be wagging the dog, the terms of the ANGPC nonetheless have importance to the legislature to assure that the tail of the dog is as strong as possible, with the flexibility to react quickly to the dynamic nature of the Project, without compromising the State's multi-faceted interests as minority owner of the Project. The suggested revisions below enhance the ANGPC's strength and flexibility, while retaining necessary reins of control. The ultimate key for protection of the State's interests, however, will be in the proposed structure of the Mainline Entity and the minority rights protections afforded

the State. When the Mainline Entity structure is unveiled by the Administration, additional changes to the ANGPC Act may be necessitated depending on the level of protections afforded.

#### Suggested Revisions/Additions to the ANGPC Act

While the ANGPC Act mirrors the other Public Corporation Acts, it is not identical to them. A number of provisions in the other Acts would be beneficial to incorporate into the ANGPC Act. In addition, based upon the terms of the ASGF Contract and the stated goals of the State set forth in the FIF, there are a number of other provisions which could provide the ANGPC greater flexibility and strength in meeting the project goals and adjusting for changes that the dynamic nature of the Pipeline Project will inevitably generate.

1. Revise Sec. 2 of the Act, Article 2, Purposes and Powers, AS 41.42.210 by adding thereto new subsections (25), (26), (27), (28), (29) and (30) as follows:

(25) to acquire, hold, use, operate, maintain, repair, replace, mortgage, encumber, lease, rent, convey, or acquire real and personal property as may be necessary or in furtherance of the project or its corporate purpose, and to transfer, license, lease, contribute as a contribution to capital or in-kind payment, or otherwise convey all or any of such property, permanently or for a term of years to any owner entity of the project; without limiting the foregoing, it may acquire such property by purchase, gift or eminent domain; to charge and collect fees, rentals or other forms of remuneration for the use of its properties;

(26) to sell, give, lease, or otherwise supply to any owner entity of the project such personnel or services as may be in furtherance of the project or its corporate purpose; to act as managing member of any owner entity of the project;

(27) to make capital contributions and loans to any owner entity of the project; to acquire any or all membership or other ownership interests in any owner entity of the project from any other person or legal entity that has a membership or ownership interest in an owner entity of the project;

(28) to retain or engage such advisers, consultants, and professional service providers as may be in furtherance of the project or its corporate purpose, including, but not limited to financial advisors to negotiate the bonds and financial obligations of the corporation, engineering and geo-technical consultants to review and report on the status of the project, accounting consultants to analyze or audit the financial reports of the owner entities of the project, and legal service providers to provide specialized legal counsel and representation of the corporation as desired to supplement the legal counsel of the attorney general pursuant to AS 41.42.070;

(29) to implement such other duties and directives as may be authorized by the legislature from time to time, including, but not limited to, if approved by the legislature,

acting as State Capacity Holder, as defined in the Alaska Stranded Gas Fiscal Contract approved by the legislature pursuant to AS 43.83.435.

(30) to negotiate collateral agreements pursuant to AS 43.83.437 that are required to implement the corporation's acquisition of an ownership interest in the project that is the subject of a proposed contract developed under this chapter. Such collateral agreements shall be subject to review and approval by the Legislative Budget and Audit Committee, and upon such approval may be entered into by the corporation.

2. Amend Sec. 2 of the Act, Article 2, Purposes and Powers, AS 41.42 by adding thereto AS 41.42.090 as follows:

**Sec. 41.42.090. Corporation Representative.** The board shall appoint such representatives and alternate representatives for each owner entity of the project to exercise the rights of the corporation as member or owner of the owner entity of the project. The representatives and alternate representatives serve at the pleasure of the board and may be removed and replaced by the board without notice, and without cause, at any time. The board shall direct the representatives and alternate representatives as to the exercise of the corporation's rights as member or owner of the owner entity of the project, provided the board may delegate to the representatives and alternate representatives authority to act on behalf of the corporation in the event that an exercise of the corporation's rights as owner of the owner entity of the project is required during the interval between board meetings of the corporation.

3. Amend Sec. 2 of the Act, Article 2, Purposes and Powers, AS 41.42.220(c) by deleting said subsections (c) and (d) and replacing it with the following subsections (c) and (d):

(c) The members of the governing body of a subsidiary entity organized under this section shall be the members of the board of the corporation. The provisions of AS 41.42.020-41.42.50 and AS 41.42.080-41.42.090 shall apply to the governing body of each subsidiary entity organized under this section. The executive director, staff, and legal advisor of the corporation shall act as the executive director, staff and legal advisor of each subsidiary entity organized under this section, subject to the provisions of AS 41.42.060-41.42.070. Notwithstanding that a subsidiary entity organized under this section shall be wholly owned by the corporation and shall have interlocking governing bodies, executive director, staff and legal advisor as provided in this subsection (c), the corporation shall not be liable for a debt, obligation, or liability of such subsidiary entity, unless expressly assumed by the corporation in a written instrument, or as otherwise provided in this chapter.

(d) The provisions of AS 41.42.400-41.42.530 apply to a subsidiary entity established under this section as if the subsidiary entity was a corporation established under this chapter. The provisions of AS 39.25.110(11), AS 39.50.200(a)(9), AS 39.50.200(b), AS 42.06.230 and AS 45.45.905 apply to a subsidiary entity established under this section as if the subsidiary entity was the Alaska Natural Gas Pipeline Corporation.

4. Amend Sec. 2 of the Act, Article 4, Purposes and Powers, by adding thereto AS 41.42-450 as follows:

**Sec. 41.42.450. Coordination with AS 43.82.** (a) Unless specifically provided otherwise in this chapter, in the event of a conflict between the provisions of AS 43.82 and this chapter, the provisions of AS 43.82 shall control.

(b) In the event of a dispute between or among the corporation, a subsidiary entity of the corporation, an owner entity of the project, and any other person or legal entity that has a membership or ownership interest in an owner entity of the project, such dispute shall be subject to the dispute resolution terms and procedures set forth in the Alaska Stranded Fiscal Contract as approved by the legislature pursuant to AS 43.82.435. The term "dispute" shall mean a dispute, matter, controversy or claim arising out of or relating to any owner entity of the project, to any ownership interest in the project, to any agreement between or among the members or owners of any owner entity of the project arising out of or relating to such owner entity of the project, or to the operation, management, or implementation of the project, including its interpretation, construction, performance, enforcement, privileges, rights or obligations.

(c) In furtherance of the purpose set forth in AS 43.82.010 and the implementation of the Alaska Stranded Fiscal Contract as approved by the legislature pursuant to AS 43.82.435, each owner entity of the project shall be deemed to impose on its managing members and owner representatives a duty to act in the best interest of the entity and perform its duties in good faith towards the goal of implementation of the project.

5. Renumber Section 14 of the Act as Section 15, and add a new Section 14 as follows:

**Sec. 14.** AS 42.06.230 is amended by adding a new subsection (c) to read:

**AS 42.06.230. Jurisdiction of Commission**

(c) The commission's jurisdiction and authority does not extend to the Alaska Natural Gas Pipeline Corporation. To the extent that the performance of any duties of the commission affects the Alaska Natural Gas Pipeline Corporation, the performance of its duties may not, as to that corporation, conflict with AS 41.42, AS 43.82, or applicable federal laws, regulations, orders, or other requirements.



# Greenberg Traurig

## Memorandum

**TO:** Senator Gene Therriault and Representative Ralph Samuels  
**FROM:** Donald C. Shepler  
**DATE:** May 22, 2006  
**RE:** Choice of Alaska LLC versus Delaware LLC for gas line project

---

At last evening's briefing of Alaska legislators I was asked by Senator Therriault to discuss the apparent decision by the gas line negotiators to use the Delaware LLC statute as the basis for the Midstream Project Entity as compared with the use of the Alaska LLC statute. As I indicated, Greenberg Traurig had previously examined that question. Accordingly, I asked Mr. Phil Gildan (one of Greenberg Traurig's shareholders) to review his prior research and prepare a short memorandum that compares the two statutes. His memo is attached.

As you will see, there are material differences in the duty of care that the Alaska LLC statute imposes on members of an LLC both to the entity itself and to the other LLC members. In addition, there are material differences in the indemnification of managing members by the entity.

These differences suggest that the choice of governing law should be carefully considered in the establishment of the LLC. Of course, we do not have available a draft of the LLC agreement which is apparently still being negotiated.

Should you have any further questions on this matter please let me know.

# Greenberg Traurig

## Memorandum

**TO:** Don Shepler  
**FROM:** Phillip C. Gildan  
**DATE:** May 22, 2006  
**RE:** Alaska Natural Gas Pipeline: Form of Ownership Entity  
Limited Liability Company/Choice of Laws

---

The choice of utilizing a Limited Liability Company (LLC) as the form of ownership entity for the Alaska Natural Gas Pipeline appears to have been agreed to among the Producers and the State negotiating team. This memorandum does not discuss the conclusion to use the indirect ownership structure of an LLC, vis-à-vis a direct ownership structure of an undivided joint interest (UJI) form of project ownership. Instead, this memorandum addresses only the question of choice of law as to formation of the LLC, and implications to the State from such choice. (Note: this memorandum does not address tax implications from choice of formation law).

From the Gas Pipeline Contract Presentations by the State negotiating team, it has been represented that the Producers and the State negotiating team have agreed upon use of the Delaware Limited Liability Company Act, Delaware Code, Title 6, Subtitle II, Chapter 18 ("Delaware Act") in lieu of the Alaska Revised Limited Liability Company Act, AS Chapter 10.50 ("Alaska Act").

Why choose the Delaware Act to form an Alaska Pipeline LLC instead of using the Alaska Act? In broad general terms, the business community maintains the perception that Delaware Courts provide a more developed body of case law affecting business entities than other states, and accordingly provide greater certainty of prediction of outcome in the event of business disputes. The corollary of this perception holds that Delaware Chancery Court Judges have a greater expertise in resolution of business disputes than judges in other states, again leading to greater certainty of prediction of outcome. An undercurrent of the perception of Delaware superiority, from both a body of law and judiciary, is that decisions by Delaware courts on business entity issues more often favor management/majority owners over minority owners. These perceptions may or may not prove out on a case by case analysis, but help explain the prevalent practice in the corporate world to establish business entities in Delaware.

### Significant Differences Between Acts/Implications to Alaska

The Delaware Act represents one end of the spectrum of LLC enabling acts. It provides less mandatory entity terms, rights and obligations in favor of flexibility of the parties to freely set their own terms, rights and obligations by contract. The Alaska Act falls in the middle of the

To: Don Shepler  
From: Phillip C. Cildan  
Date: May 22, 2006  
Re: Alaska Natural Gas Pipeline: Form of Ownership Entity  
Limited Liability Company/Choice of Laws

Page 2

spectrum. It provides significant freedom for the parties to set their own terms, rights and obligations, but imposes certain minimum member protections that cannot be contracted away. These minimum member protections afforded by the Alaska Act can be incorporated into a Delaware Act LLC by negotiation between/among the member parties, but absent such negotiation, those member protections will not exist. Two of these protections will be discussed below.

**1. Duty of Managing Members to Entity:**

The Delaware Act imposes no duty on managing members to either the company or to the other members of the company. It permits the members to contractually eliminate or create duties for managing members, with the exception that the general contract law which implies a duty of good faith and fair dealing, which can not be eliminated. The statute states:

**§ 18-1101. Construction and application of chapter and limited liability company agreement.**

- (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.
- (b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.
- (c) To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

The Alaska Act, however imposes an express duty on managing members to act in the best interest of the company and adopts an ordinary prudent person standard of care. This duty is imposed as statutory protection of minority members (and other managing members) rights from a manager or managing member acting in its own self-interest which may be contrary to the business of the entity and the investment backed interests of the other members. It states:

**AS 10.50.135. Duty of care.**

- (a) A person who is a manager or a managing member of a limited liability company shall perform the duties of management in good faith, in a manner the person reasonably believes to be in the best interests of the company, and with the care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances.

To: Don Shepler  
From: Phillip C. Gildan  
Date: May 22, 2006  
Re: Alaska Natural Gas Pipeline: Form of Ownership Entity  
Limited Liability Company/Choice of Laws

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Without the duty of care that the Alaska Act provides, a manager or managing members controlling an entity could act in their own self interest and contrary to the interest of the entity's business, with only the implied covenant of good faith, which is a significantly lower standard of care and more difficult to apply if the parties have contractually elected not to impose a duty to the entity.

## 2. Indemnity of Managing Members.

The Delaware Act grants broad discretion to the members to indemnify and hold harmless any member from and against any claims and demands without limitation. It states:

### § 18-108. Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

The Alaska Act also provides the right to indemnify members, but imposes specific limitations on the ability to indemnify members, with material procedural terms enumerated. It states (with emphasis added):

### AS 10.50.148. Indemnification of managers, managing members, employees, and agents; insurance.

(a) A limited liability company may indemnify a person who was, is, or is threatened to be made a party to a completed, pending, or threatened action or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the company, by reason of the fact that the person is or was a manager, managing member, employee, or agent of the company, or is or was serving at the request of the company as a manager, managing member, employee, or agent of another limited liability company, partnership, joint venture, trust, or other enterprise. Indemnification may include reimbursement of expenses, attorney fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or proceeding *if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the company, and, with respect to a criminal action or proceeding, the person had no reasonable cause to believe the conduct was unlawful.* The termination of an action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not

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opposed to the best interests of the company, and, with respect to a criminal action or proceeding, the person had reasonable cause to believe that the conduct was unlawful.

(b) A limited liability company may indemnify a person who was, is, or is threatened to be made a party to a completed, pending, or threatened action by or in the right of the company to procure a judgment in its favor by reason of the fact that the person is or was a manager, managing member, employee, or agent of the company, or is or was serving at the request of the company as a manager, managing member, employee, or agent of another limited liability company, partnership, joint venture, trust, or other enterprise. Indemnification may include reimbursement for expenses and attorney fees actually and reasonably incurred by the person in connection with the defense or settlement of the action *if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the company. Indemnification may not be made in respect of any claim, issue, or matter as to which the person has been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the company except to the extent that the court in which the action was brought determines upon application that, despite the adjudication of liability, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses that the court considers proper.*

(c) To the extent that a manager, managing member, employee, or agent of a limited liability company has been successful on the merits or otherwise in defense of an action or proceeding referred to in (a) or (b) of this section, or in defense of a claim, issue, or matter in the action or proceeding, the manager, managing member, employee, or agent shall be indemnified against expenses and attorney fees actually and reasonably incurred in connection with the defense.

(d) *Unless otherwise ordered by a court, indemnification under (a) or (b) of this section may only be made by a company upon a determination that indemnification of the manager, managing member, employee, or agent is proper in the circumstances because the manager, managing member, employee, or agent has met the applicable standard of conduct set out in (a) and (b) of this section. The determination shall be made by the members.*

Without these limitations on indemnification, indemnity protection could be contractually provided even in those instances where the indemnified party acted against the interests of the entity, had causal or contributing negligence, or committed a crime.

**3. Dispute Resolution/Venue:** Neither the Delaware Act nor the Alaska Act dictates any particular form of dispute resolution or the location of venue for any dispute resolution proceeding involving companies organized under their respective acts. Under both of the acts, the parties may seek resort to the courts of each respective state to resolve disputes, but such resort is not mandated.

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From: Phillip C. Gildan  
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As presented in the proposed Alaska Stranded Gas Fiscal Contract, the parties are proposing a structurally developed alternative dispute resolution process and procedures. Under the Contract, the substantive law of the State of Alaska applies with the Alaska Superior Court the venue for award judgment of matters arising out of the Contract. This may mitigate towards aligning the dispute resolution processes under the Contract and the LLC into a single integrated process, as disputes that might be anticipated to arise under the LLC or the Contract would likely implicate the other necessitating a global resolution under both.

From the Administration's presentations, however, it appears that the parties may be considering a traditional dispute resolution procedure for LLC related disputes, with venue in the Delaware Chancery Court, under the argument discussed above that Delaware judges would be more proficient in adjudicating claims arising from the Delaware LLC statute. Aside from an inconvenient forum arguments as the project and many of the participants will be located in Alaska, the likelihood of conflicting dispute resolution procedures and forums would likely eliminate any perceived superiority of Delaware Judges over Alaska Judges in interpreting Delaware LLC laws, particularly where the Delaware Act essentially waives statutory protections in lieu of contract agreement – such that no particular expertise in the Delaware Act may be necessary, but only expertise with contract interpretation in the context of pipeline project issues, in which the Alaska courts may have superior experience and proficiency.

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 2003  
(H) Publish Date: 5/31/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
Title Alaska Natural Gas Pipeline Corporation RDU Resource Development  
Component Oil and Gas Development  
Sponsor Rules by Request of the Governor  
Requester Governor Component No. 439

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

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Under the proposed Alaska Stranded Gas Fiscal Contract, the state proposes to acquire a 20 percent equity interest in the gasline project with the remainder financed by ExxonMobil, ConocoPhillips, and BP Exploration. This bill would establish the Alaska Natural Gas Pipeline Corporation to finance, own, and manage the state's interests in the North Slope natural gas pipeline project. The Alaska Natural Gas Pipeline Corporation (Alaska Pipe) will be a public corporation within the Dept. of Revenue but with a legal existence independent of and separate from the state.

There is no anticipated fiscal impact to Division of Oil and Gas from implementation of this bill.

Prepared by: William Van Dyke, Acting Director Phone: 269-8800  
Division: Oil and Gas Date/Time: 5/17/2006  
Approved by: Michael Menge, Commissioner Date: 5/17/2006  
Agency: Natural Resources

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: HB 2003  
(H) Publish Date: 5/31/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Alaska Natural Gas Pipeline Corporation RDU: Alaska Natural Gas Pipeline Corporati  
Component: Gas Pipeline  
Sponsor: Rules Committee  
Requester: Governor Component No.: 2840

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	2,170.2	2,257.0	2,347.3	2,441.2	2,538.8	2,640.4
Travel	175.0	178.5	182.1	185.7	189.4	193.2
Contractual	218.0	222.4	226.8	231.3	236.0	240.7
Supplies	110.0	60.0	61.2	62.4	63.7	64.9
Equipment	147.0	36.3	37.0	37.8	38.5	39.2
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>2,820.2</b>	<b>2,754.2</b>	<b>2,854.4</b>	<b>2,958.4</b>	<b>3,066.4</b>	<b>3,178.5</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
Bond Proceeds						
AK Pipe Corp Receipts	2,820.2	2,754.2	2,854.4	2,958.4	3,066.4	3,178.5
<b>TOTAL</b>	<b>2,820.2</b>	<b>2,754.2</b>	<b>2,854.4</b>	<b>2,958.4</b>	<b>3,066.4</b>	<b>3,178.5</b>

Estimate of any current year (FY2006) cost: 0.0

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

**POSITIONS**

Full-time	17	17	17	17	17	17
Part-time	5	5	5	5	5	5
Temporary						

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

This bill creates a new public corporation in the Department of Revenue, the Alaska Natural Gas Pipeline Corporation (AK Pipe) which will finance, own and manage the state's interest in the Alaska North Slope natural gas pipeline project. This fiscal note shows the operating cost of the corporation. The cost of the state's equity ownership of the project will be financed through direct capital appropriations from the state and by revenue bonds issued by ANGPC. The funding source for AK Pipe is assumed to be from cash reserves fund and it's earnings, and any other receipts of the corporation.

Prepared by: Jerry Burnett Phone: 465-2312  
Division: Administrative Services Date/Time: 5/9/06 12:00 AM  
Approved: Steve Porter Date: 5/9/2006  
Agency: Department of Revenue

FISCAL NOTE # 2

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. HB 2003

ANALYSIS CONTINUATION

The five part time employees shown in the fiscal note are the public members of the board of directors who will be compensated \$ 100 per day for board meetings. We estimate that they will meet at least two days per month on average and that most meetings will be held in Anchorage.

The seventeen fulltime employees consist of the following exempt employees: Alaska Natural Gas Manager, Gas Pipeline Coordinator, Petroleum Engineer, Civil Engineer, Financial Analyst, Regulations Administrator, Commercial Analyst, Local Government Specialist, Economist, Analyst/Programmer, Accountant, Project Coordinator, Administrative Manager, Labor Economist, Executive Secretary, Accounting Tech and Administrative Clerk. Personal services costs are incremented by 4% per year.

Office space, supplies and equipment needs are based on locating the corporation staff in the Atwood Building. We assume that the corporation will utilize the state's network, accounting and payroll systems and thus we have allocated costs for core services.

**HB**

**30001**

**HFIN**

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# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3  
 Bill Version: CSHB 3001(FIN)  
 (H) Publish Date: 8/4/06

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

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	813.1	829.4	845.9	862.9	880.1	897.7
Travel						
Contractual	522.5	485.4	115.7	116.1	118.4	120.8
Supplies	36.7					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous [OH office, etc]	53.0	53.0	53.0	53.0	53.0	53.0
<b>TOTAL OPERATING</b>	<b>1,425.3</b>	<b>1,367.8</b>	<b>1,014.6</b>	<b>1,032.0</b>	<b>1,051.5</b>	<b>1,071.5</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,425.3	1,367.8	1,014.6	1,032.0	1,051.5	1,071.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>1,425.3</b>	<b>1,367.8</b>	<b>1,014.6</b>	<b>1,032.0</b>	<b>1,051.5</b>	<b>1,071.5</b>

Estimate of any current year (FY2006) cost: \_\_\_\_\_

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

**POSITIONS**

Full-time	9	9	9	9	9	9
Part-time						
Temporary						

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

This bill would amend the oil and gas production tax by basing the tax on the net value of the oil and gas. The net value is the wellhead value (net of royalty) less all qualified lease expenditures, including capital and operating costs, and property taxes. The net profit would be subject to a variable tax rate with a floor of 20% and a ceiling of 25%, less a credit of 20% which applies to capital costs upstream of the point of production. The variable tax rate would be determined by the level of capital investment, limited by tax benefits generated by capital investments. The capital investment benefit limitation is 75% of qualified capital costs. There would also be a progressive surcharge based on 0.25% of the difference between actual per barrel net income and \$40, applied to net production tax value. The surcharge would not be considered a deductible lease expenditure.

There would be an additional allowance of up to \$12 million per company for companies producing less than 50,000 barrels of oil equivalent per day; this amount is reduced as production reaches 100,000 boe per day, the point at

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

Phone: 269-1019  
 Date/Time: 8/4/06 9:00 AM

Approved by: Tom Boutin, Deputy Commissioner  
 Agency: Department of Revenue

Date: 8/4/2006

FISCAL NOTE #3

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. CSHB 3001(FIN)

ANALYSIS CONTINUATION

which no allowance is authorized. The allowance expires in 2016. In addition, as a transition provision, there would be a 20% credit for capital costs incurred over the period April 1, 2001 through April 1, 2006, recoverable at \$1 for every \$2 in capital expenditures. Transition costs cannot be recovered after 2013.

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

The bill would be effective April 1, 2006.

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

The cost assumptions are as follows:

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

The table shows the 2007-2012 receipts from the bill, sensitive to different oil prices. These include the Department of Revenue forecast, a \$40 price, and a \$60 price. (Note that the status quo numbers are slightly different from what is reflected in the Spring 2006 Revenue Sources Book because of volume adjustments from the oil spill, and because of some differences between what some taxpayers actually remit and what is ultimately expected to be collected.)

Operating expenditures include costs for 8 additional positions for auditors: 1 O & G Specialist (Range 23), 3 O & G Revenue Auditor IV (Range 22), and 4 O & G Revenue Auditor III (Range 20). These positions would be used to fulfill additional audit responsibilities inherent in a net profits tax. In addition, we request 1 additional Tax Tech III position (Range 14) to process additional information and tax returns that will be required, and additional credit applications anticipated. Personal Services reflect a 2% yearly increase.

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

Fiscal Note #3

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. CSHB 3001(FIN)

ANALYSIS CONTINUATION (MILLIONS OF 2005 DOLLARS)

The revenues provided in the table below do not reflect increased revenues in FY06 that would result from an effective date of 4/1/06. At a preliminary estimated quarter end price of \$65, the bill would provide approximately \$440 million over the status quo system.

Fiscal Year	DOR Forecast	Status Quo Tax	Tax from Bill	Gain from Bill*
2007	\$53.60	989	1985	996
2008	\$46.90	784	1509	725
2009	\$25.50	355	342	-12
2010	\$25.50	315	304	-11
2011	\$25.50	281	300	19
2012	\$25.50	271	296	25

---

Fiscal Year	Medium Price	Status Quo Tax	Tax from Bill	Gain from Bill*
2007	\$40.00	708	1132	424
2008	\$40.00	655	1099	444
2009	\$40.00	631	1175	544
2010	\$40.00	582	1137	556
2011	\$40.00	544	1166	622
2012	\$40.00	536	1178	642

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Fiscal Year	High Price	Status Quo Tax	Tax from Bill	Gain from Bill*
2007	\$60.00	1,120	2541	1,421
2008	\$60.00	1,032	2476	1,445
2009	\$60.00	978	2603	1,625
2010	\$60.00	901	2534	1,633
2011	\$60.00	842	2587	1,744
2012	\$60.00	831	2610	1,778

\*Numbers may not sum due to rounding

24-GH2096M  
Bullock  
8/1/06

*B/Z 8/1/06 adopted*

CS FOR HOUSE BILL NO. 3001( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - THIRD SPECIAL SESSION

BY

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the production tax on oil and gas and to conservation surcharges on  
2 oil; relating to criminal penalties for violating conditions governing access to and use of  
3 confidential information relating to the production tax; amending the definition of 'gas'  
4 as that definition applies in the Alaska Stranded Gas Development Act; making  
5 conforming amendments; and providing for an effective date."

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

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

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

12 (b) It is the intent of the legislature that the division or other unit of the Department of  
13 Environmental Conservation assigned responsibility for administration of the programs under

1 AS 46.08 that are principally supported by the conservation surcharges on oil levied under  
2 AS 43.55.201 - 43.55.299 and 43.55.300 - 43.55.310

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

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

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

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

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

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

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

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

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

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

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

1 (Internal Revenue Code); and

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

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

5 (e) There is levied on the producer of oil or gas a tax for all oil and gas  
6 produced each calendar year from each lease or property in the state, less any oil and  
7 gas the ownership or right to which is exempt from taxation or constitutes a  
8 landowner's royalty interest. Except as otherwise provided under (j) and (k) of this  
9 section, the tax is equal to the annual production tax value of the taxable oil and gas as  
10 calculated under AS 43.55.160 multiplied by the tax rate determined under (f) of this  
11 section.

12 (f) For the purposes of (e) of this section,

13 (1) the tax rate for a calendar year under (e) of this section is the  
14 weighted average of the percentage rate under (2) of this subsection applicable to the  
15 producer's base production, if any, for the calendar year and the percentage rate under  
16 (3) of this subsection applicable to the producer's incremental production, if any, for  
17 the calendar year, with each percentage rate weighted proportionally to the amount of  
18 the production to which it applies; however, the tax rate for 2006, 2007, and 2008 may  
19 not exceed 22 1/2 percent;

20 (2) the percentage rate for each year applicable to a producer's base  
21 production is 25 percent;

22 (3) the percentage rate applicable to a producer's incremental  
23 production is

24 (A) for 2006 through 2011, 15 percent;

25 (B) for 2012 through 2030, one-half percentage point greater  
26 than the percentage rate for the immediately preceding year;

27 (C) for 2031 and later years, 25 percent;

28 (4) except as otherwise provided under (6) of this subsection, a  
29 producer's base production

30 (A) for a calendar year after 2005 and before 2031 is

31  $.75 \times TP \times (.95)^{\exp(n - 2005)}$

1 where:

2 TP = the total amount of taxable and nontaxable oil and gas, in BTU  
3 equivalent barrels, produced by the producer from leases or properties in the state  
4 during 2005; and

5 n = for calendar years 2006 through 2030, the number that represents the  
6 calendar year for which the tax is being computed;

7 (B) for calendar year 2031 and later is zero;

8 (5) a producer's incremental production for a calendar year is the total  
9 amount of taxable and nontaxable oil and gas, in BTU equivalent barrels, produced by  
10 the producer from leases or properties in the state during the calendar year, less the  
11 producer's base production for the calendar year; however, the incremental production  
12 may not be less than zero;

13 (6) if a working interest in a lease or property from which oil or gas  
14 was produced during 2005 is transferred after 2005, the amount of 2005 oil and gas  
15 production attributable to that interest is considered, from the date of the transfer, to  
16 have been produced by the producer acquiring the working interest, for the purposes  
17 of computing the term "TP" under (4) of this subsection.

18 (g) In addition to the tax levied under (e) of this section, during each calendar  
19 year for which the price index determined under (h) of this section is greater than zero  
20 for one or more months, there is levied on the producer of oil or gas a tax for all oil  
21 and gas produced during that calendar year from each lease or property in the state,  
22 less any oil and gas the ownership or right to which is exempt from taxation or  
23 constitutes a landowner's royalty interest. Except as otherwise provided under (j) and  
24 (k) of this section, the tax levied under this subsection is equal to the sum, over all  
25 months in the calendar year, of the amounts calculated for each month as follows:  
26 \_\_\_\_\_ percent of the monthly production tax value of the taxable oil and gas as  
27 calculated under AS 43.55.160, multiplied by the price index determined under (h) of  
28 this section. However, the amount calculated under this subsection for any month may  
29 not exceed \_\_\_\_\_ percent of the monthly production tax value of the taxable oil and  
30 gas as calculated under AS 43.55.160.

31 (h) For purposes of (g) of this section, the price index for a month is calculated

1 by subtracting \_\_\_\_\_ from the number that is equal to the quotient of the total  
2 monthly production tax value of the taxable oil and gas produced by the producer  
3 during that month, as calculated under AS 43.55.160, divided by the total amount of  
4 the taxable oil and gas produced by the producer during that month, in BTU equivalent  
5 barrels. However, a price index may not be less than zero.

6 (i) There is levied on the producer of oil or gas a tax for all oil and gas  
7 produced each calendar year from each lease or property in the state the ownership or  
8 right to which constitutes a landowner's royalty interest, except for oil and gas the  
9 ownership or right to which is exempt from taxation. The provisions of this subsection  
10 apply to a landowner's royalty interest as follows:

11 (1) the tax levied for oil is equal to five percent of the gross value at  
12 the point of production of the oil;

13 (2) the tax levied for gas is equal to 1.667 percent of the gross value at  
14 the point of production of the gas;

15 (3) if the department determines that, for purposes of reducing the  
16 producer's tax liability under (1) or (2) of this subsection, the producer has received or  
17 will receive consideration from the royalty owner offsetting all or a part of the  
18 producer's royalty obligation, other than a deduction under AS 43.55.020(d) of the  
19 amount of a tax paid, then, notwithstanding (1) and (2) of this subsection, the tax is  
20 equal to 25 percent of the gross value at the point of production of the oil and gas.

21 (j) For a calendar year before 2022, the total tax levied by (e) and (g) of this  
22 section on gas produced from a lease or property in the Cook Inlet sedimentary basin  
23 may not exceed

24 (1) for a lease or property that first commenced commercial production  
25 of gas before April 1, 2006, the product obtained by multiplying (A) the amount of  
26 taxable gas produced during the calendar year from the lease or property, times (B) the  
27 average rate of tax that was imposed under this chapter on taxable gas produced from  
28 the lease or property for the 12-month period ending on March 31, 2006, times (C) the  
29 quotient obtained by dividing the total gross value at the point of production of the  
30 taxable gas produced from the lease or property during the 12-month period ending on  
31 March 31, 2006, by the total amount of that gas;

1 (2) for a lease or property that first commences commercial production  
2 of gas after March 31, 2006, the product obtained by multiplying (A) the amount of  
3 taxable gas produced during the calendar year from the lease or property, times (B) the  
4 average rate of tax that was imposed under this chapter on taxable gas produced from  
5 all leases or properties in the Cook Inlet sedimentary basin for the 12-month period  
6 ending on March 31, 2006, times (C) the average prevailing value for gas produced in  
7 the Cook Inlet area for the 12-month period ending March 31, 2006, as determined by  
8 the department under AS 43.55.020(f).

9 (k) For a calendar year before 2022, the total tax levied by (e) and (g) of this  
10 section on oil produced from a lease or property in the Cook Inlet sedimentary basin  
11 may not exceed

12 (1) for a lease or property that first commenced commercial production  
13 of oil before April 1, 2006, the product obtained by multiplying (A) the amount of  
14 taxable oil produced during the calendar year from the lease or property, times (B) the  
15 average rate of tax that was imposed under this chapter on taxable oil produced from  
16 the lease or property for the 12-month period ending on March 31, 2006, times (C) the  
17 quotient obtained by dividing the total gross value at the point of production of the  
18 taxable oil produced from the lease or property during the 12-month period ending on  
19 March 31, 2006, by the total amount of that oil;

20 (2) for a lease or property that first commences commercial production  
21 of oil after March 31, 2006, the product obtained by multiplying (A) the amount of  
22 taxable oil produced during the calendar year from the lease or property, times (B) the  
23 average rate of tax that was imposed under this chapter on taxable oil produced from  
24 all leases or properties in the Cook Inlet sedimentary basin for the 12-month period  
25 ending on March 31, 2006, times (C) the average prevailing value for oil produced in  
26 the Cook Inlet area for the 12-month period ending on March 31, 2006, as determined  
27 by the department under AS 43.55.020(f).

28 (l) When a limitation under (j) or (k) of this section on the tax levied by (e)  
29 and (g) of this section has the effect of reducing the producer's tax on oil or gas  
30 produced from a lease or property below the amount of tax that would be levied in the  
31 absence of that limitation, the amount of the reduction is applied first against the tax

1 levied by (g) of this section. However, that tax may not be reduced below zero.

2 (m) Notwithstanding any contrary provision of AS 38.05.180(i),  
3 AS 41.09.010, AS 43.20.043, or AS 43.55.025, tax credits under AS 38.05.180(i),  
4 AS 41.09.010, AS 43.20.043, and AS 43.55.025 that are allocated to gas produced  
5 from leases or properties in the Cook Inlet sedimentary basin and that are available to  
6 be applied against a tax levied by (e) of this section on gas produced from leases or  
7 properties in the Cook Inlet sedimentary basin during a calendar year may be applied  
8 only against the tax levied by (e) of this section on that gas. The amount by which the  
9 amount of tax credits that are allocated to gas produced from leases or properties in the  
10 Cook Inlet sedimentary basin and that the producer would otherwise be allowed to use  
11 for a later calendar year or transfer to another person exceeds the amount of tax credits  
12 whose application would reduce the tax levied by (e) of this section on that gas to  
13 zero, if any, is considered the amount of excess tax credits, and the excess tax credits  
14 are subject to the following:

15 (1) for each lease or property for which a limitation under (j) or (k) of  
16 this section on the tax levied by (e) and (g) of this section has the effect of reducing  
17 the producer's tax below the amount of tax that would be levied in the absence of that  
18 limitation, the producer shall calculate the amount of that reduction:

19 (2) the producer shall calculate the total of the reductions calculated  
20 under (1) of this subsection for all affected leases or properties:

21 (3) the producer shall reduce the amount of excess tax credits by the  
22 total calculated under (2) of this subsection, but not to less than zero:

23 (4) any amount of excess tax credits remaining after reduction under  
24 (3) of this subsection may be used for a later calendar year, transferred to another  
25 person, or applied against a tax levied on oil or gas produced from a lease or property  
26 located anywhere in the state to the extent otherwise allowed under applicable law  
27 governing the tax credits.

28 (n) Allocation of credits under (m) of this section shall be made under  
29 regulations adopted by the department that provide for reasonable methods of  
30 allocating tax credits to gas produced from leases or properties in the Cook Inlet  
31 sedimentary basin.

1 (o) The department shall by regulation establish sampling, testing, and  
2 averaging methods for determining the heating value of a producer's gas. In the  
3 absence of sufficient sampling and testing of gas produced during 2005 or 2006, the  
4 department may provide for the heating value of the gas to be estimated based on  
5 sampling and testing of later-produced gas or on other information.

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

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

10 (1) producing oil or gas leases;

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

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

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

16 (a) The tax levied on a producer for a calendar year by AS 43.55.011(e), (g),  
17 and (i) must be paid as follows:

18 (1) an installment payment of the estimated tax levied by  
19 AS 43.55.011(e) and (g), net of any tax credits applied as allowed by law, is due for  
20 each month of the calendar year on the last day of the following month; the amount of  
21 the installment payment is the sum of the amounts calculated under (2) and (3) of this  
22 subsection, but not less than zero;

23 (2) the first of the two amounts used to calculate the installment  
24 payment for a month under (1) of this subsection is equal to the remainder obtained by  
25 subtracting

26 (A) 1/12 of the tax credits that are allowed by law to be applied  
27 against the tax levied by AS 43.55.011(e) for the calendar year; from

28 (B) the total of the monthly production values calculated under  
29 AS 43.55.160(a)(2) of all oil and gas taxable under AS 43.55.011(e) and  
30 produced by the producer from leases or properties in the state during the  
31 month, multiplied by the tax rate determined under AS 43.55.011(f) for the

1 calendar year, assuming that the producer's incremental production for the  
2 calendar year is the amount calculated according to the following formula, but  
3 not less than zero:

$$4 \quad IP = 12 \times (MP - 1/12 \times BP)$$

5 where:

6 IP = the producer's assumed incremental production for the calendar  
7 year;

8 MP = the total amount of taxable and nontaxable oil and gas, in BTU  
9 equivalent barrels, produced by the producer from leases or properties in the  
10 state during the month; and

11 BP = the producer's base production for the calendar year;

12 (3) the second of the two amounts used to calculate the installment  
13 payment for a month under (1) of this subsection is the amount calculated for the  
14 month under AS 43.55.011(g);

15 (4) an installment payment of the estimated tax levied by  
16 AS 43.55.011(i) for each lease or property is due for each month of the calendar year  
17 on the last day of the following month; the amount of the installment payment is the  
18 sum of

19 (A) the applicable percentage rate for oil provided under  
20 AS 43.55.011(i), multiplied by the gross value at the point of production of the  
21 oil taxable under AS 43.55.011(i) and produced from the lease or property  
22 during the month; plus

23 (B) the applicable percentage rate for gas provided under  
24 AS 43.55.011(i), multiplied times the gross value at the point of production of  
25 the gas taxable under AS 43.55.011(i) and produced from the lease or property  
26 during the month;

27 (5) any amount of tax levied by AS 43.55.011(e), (g), and (i), net of  
28 any credits applied as allowed by law, that exceeds the total of the amounts due as  
29 installment payments of estimated tax is due on March 31 of the year following the  
30 calendar year of production.

31 \* See. 8, AS 43.55.020(b) is amended to read:

1 (b) The production tax on oil and [OR] gas shall be paid to the department  
2 by or on behalf of the producer.

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

4 (d) In making settlement with the royalty owner for oil and gas that is  
5 taxable under AS 43.55.011, the producer may deduct the amount of the tax paid on  
6 taxable royalty oil and [OR] gas, or may deduct taxable royalty oil or gas equivalent  
7 in value at the time the tax becomes due to the amount of the tax paid. If the total  
8 deductions of installment payments of estimated tax for a calendar year exceed  
9 the actual tax for that calendar year, the producer shall, before April 1 of the  
10 following year, refund the excess to the royalty owner. Unless otherwise agreed  
11 between the producer and the royalty owner, the amount of the tax paid under  
12 AS 43.55.011(e) and (g) on taxable royalty oil and gas for a calendar year, other  
13 than oil and gas the ownership or right to which constitutes a landowner's  
14 royalty interest, is considered to be the gross value at the point of production of  
15 the taxable royalty oil and gas produced during the calendar year multiplied by a  
16 figure that is a quotient, in which

17 (1) the numerator is the producer's total tax liability under  
18 AS 43.55.011(e) and (g) for the calendar year of production; and

19 (2) the denominator is the total gross value at the point of  
20 production of the oil and gas taxable under AS 43.55.011(e) and (g) produced by  
21 the producer from all leases and properties in the state during the calendar year.

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

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

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

31 (f) If oil or gas is produced but not sold, or if oil or gas is produced and

1 sold under circumstances where the sale price does not represent the prevailing value  
2 for oil or gas of like kind, character, or quality in the field or area from which the  
3 product is produced, the department may require the tax to be paid upon the basis of  
4 the value of oil or gas of the same kind, quality, and character prevailing for that field  
5 or area during the calendar month of production or sale [FOR THAT FIELD OR  
6 AREA].

7 \* Sec. 12. AS 43.55.020 is amended by adding new subsections to read:

8 (g) Notwithstanding any contrary provision of AS 43.05.225, an unpaid  
9 amount of an installment payment required under (a)(1) – (4) of this section that is not  
10 paid when due bears interest (1) at the rate provided for an underpayment under 26  
11 U.S.C. 6621 (Internal Revenue Code), as amended, compounded daily, from the date  
12 the installment payment is due until the March 31 described in AS 43.55.030(a), and  
13 (2) as provided for a delinquent tax under AS 43.05.225 after that March 31. Interest  
14 accrued under (1) of this subsection that remains unpaid after that March 31 is treated  
15 as an addition to tax that bears interest under (2) of this subsection. An unpaid amount  
16 of tax due under (a)(5) of this section that is not paid when due bears interest as  
17 provided for a delinquent tax under AS 43.05.225.

18 (h) Notwithstanding any contrary provision of AS 43.05.280,

19 (1) an overpayment of an installment payment required under (a)(1) –  
20 (4) of this section bears interest at the rate provided for an overpayment under 26  
21 U.S.C. 6621 (Internal Revenue Code), as amended, compounded daily, from the later  
22 of the date the installment payment is due or the date the overpayment is made, until  
23 the earlier of (A) the date it is refunded or is applied to an underpayment, or (B) the  
24 March 31 described in AS 43.55.030(a);

25 (2) except as provided under (1) of this subsection, interest with  
26 respect to an overpayment is allowed only on any net overpayment of the payments  
27 required under (a) of this section that remains after the later of the March 31 described  
28 in AS 43.55.030(a) or the date that the statement required under AS 43.55.030(a) is  
29 filed;

30 (3) interest is allowed under (2) of this subsection only from a date that  
31 is 90 days after the later of the March 31 described in AS 43.55.030(a) or the date that

1 the statement required under AS 43.55.030(a) is filed: interest is not allowed if the  
2 overpayment was refunded within the 90-day period:

3 (4) interest under (2) and (3) of this subsection is paid at the rate and in  
4 the manner provided in AS 43.05.225(1).

5 \* Sec. 13. AS 43.55 is amended by adding new sections to read:

6 **Sec. 43.55.023. Tax credits for certain losses and expenditures.** (a) A  
7 producer or explorer may take a tax credit for a qualified capital expenditure as  
8 follows:

9 (1) notwithstanding that a qualified capital expenditure may be a  
10 deductible lease expenditure for purposes of calculating the production tax value of oil  
11 and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under  
12 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or  
13 explorer that incurs a qualified capital expenditure may also elect to take a tax credit  
14 against a tax due under AS 43.55.011(e) in the amount of 20 percent of that  
15 expenditure:

16 (2) a producer or explorer may take a credit for a qualified capital  
17 expenditure incurred in connection with geological or geophysical exploration or in  
18 connection with an exploration well only if the producer or explorer provides to the  
19 department, as part of the statement required under AS 43.55.030(a) for the calendar  
20 year for which the credit is sought to be taken, the producer's or explorer's written  
21 agreement

22 (A) to notify the Department of Natural Resources, before the  
23 later of 30 days after completion of the geological or geophysical data  
24 processing or completion of the well, or 30 days after the statement is filed, of  
25 the date of completion and to submit a report to that department describing the  
26 processing sequence and provide a list of data sets available;

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

30 (C) that, notwithstanding any provision of AS 38, the  
31 Department of Natural Resources shall hold confidential the information

1 provided to that department under this paragraph for 10 years following the  
2 completion date, after which the department shall publicly release the  
3 information after 30 days' public notice.

4 (b) A producer or explorer may elect to take a tax credit in the amount of 20  
5 percent of a carried-forward annual loss. A credit under this subsection may be applied  
6 against a tax due under AS 43.55.011(e). For purposes of this subsection, a carried-  
7 forward annual loss is the amount of a producer's or explorer's adjusted lease  
8 expenditures under AS 43.55.165 and 43.55.170 for a previous calendar year that was  
9 not deductible for that calendar year under AS 43.55.160(b) and (c).

10 (c) A credit or portion of a credit under this section may not be used to reduce  
11 a person's tax liability under AS 43.55.011(e) for any calendar year below zero, and  
12 any unused credit or portion of a credit not used under this subsection may be applied  
13 in a later calendar year.

14 (d) Except as limited by (i) of this section, a person entitled to take a tax credit  
15 under this section that wishes to transfer the unused credit to another person may  
16 apply to the department for a transferable tax credit certificate. An application under  
17 this subsection must be in a form prescribed by the department and must include  
18 supporting information and documentation that the department reasonably requires.  
19 The department shall grant or deny an application, or grant an application as to a lesser  
20 amount than that claimed and deny it as to the excess, not later than 60 days after the  
21 later of (1) March 31 of the year following the calendar year in which the qualified  
22 capital expenditure or carried-forward annual loss for which the credit is claimed was  
23 incurred; (2) if the applicant is required under AS 43.55.030(a) to file a statement on  
24 or before March 31 of the year following the calendar year in which the qualified  
25 capital expenditures or carried-forward annual loss for which the credit is claimed was  
26 incurred, the date the statement was filed; or (3) the date the application was received  
27 by the department. If, based on the information then available to it, the department is  
28 reasonably satisfied that the applicant is entitled to a credit, the department shall issue  
29 the applicant a transferable tax credit certificate for the amount of the credit. A  
30 certificate issued under this subsection does not expire.

31 (e) A person to which a transferable tax credit certificate is issued under (d) of

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

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

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

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

25 (3) that the applicant does not have an outstanding liability to the state  
26 for unpaid delinquent taxes under this title; and

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

30 (g) The issuance of a transferable tax credit certificate under (d) of this section  
31 or the issuance of a cash refund certificate under (f) of this section does not limit the

1 department's ability to later audit a tax credit claim to which the certificate relates or to  
2 adjust the claim if the department determines, as a result of the audit, that the applicant  
3 was not entitled to the amount of the credit for which the certificate was issued. The  
4 tax liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is  
5 increased by the amount of the credit that exceeds that to which the applicant was  
6 entitled, or the applicant's available valid outstanding credits applicable against the tax  
7 levied by AS 43.55.011(e) are reduced by that amount. If the applicant's tax liability is  
8 increased under this subsection, the increase bears interest under AS 43.05.225 from  
9 the date the transferable tax credit certificate was issued. For purposes of this  
10 subsection, an applicant that is an explorer is considered a producer subject to the tax  
11 levied by AS 43.55.011(e).

12 (h) Regulations adopted to implement this section must include provisions  
13 prescribing reporting, record keeping, and certification procedures and requirements to  
14 verify the accuracy of credits claimed and to ensure that a credit is not used more than  
15 once.

16 (i) For the purposes of this section,

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

26 (2) a producer or explorer may elect to take a tax credit against a tax  
27 due under AS 43.55.011(e) in the amount of 20 percent of the producer's or explorer's  
28 transitional investment expenditures, but only to the extent that the amount does not  
29 exceed 1/10 of the producer's or explorer's qualified capital expenditures that are  
30 incurred during the 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 that ends after the later of

3 (i) 2013; or

4 (ii) the sixth calendar year after the calendar year for  
5 which the producer first applies a credit under this subsection against a  
6 tax due under AS 43.55.011(e), if the producer did not have  
7 commercial production of oil or gas from a lease or property in the state  
8 before April 1, 2006;

9 (B) more than once; or

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

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

15 (j) As a condition of receiving a tax credit under this section, a producer or  
16 explorer that obtains the tax credit for or directly related to a pipeline, facility, or other  
17 asset that is or becomes subject to regulation by the Federal Energy Regulatory  
18 Commission, the Regulatory Commission of Alaska, or a successor regulatory body  
19 shall at all times support and in all rate proceedings file to flow through 100 percent of  
20 the tax credits to ratepayers as a reduction in the costs of service for the pipeline,  
21 facility, or other asset.

22 (k) In this section, "qualified capital expenditure"

23 (1) means, except as otherwise provided in (2) of this subsection, an  
24 expenditure that is a lease expenditure under AS 43.55.165 and is

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

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

29 (i) treated as a capitalized expenditure for federal  
30 income tax reporting purposes by the person incurring the expenditure;

31 or

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

3 (2) does not include an expenditure incurred to acquire an asset

4 (A) the cost of previously acquiring which was a lease  
5 expenditure under AS 43.55.165 or would have been a lease expenditure under  
6 AS 43.55.165 if it had been incurred after March 31, 2006; for purposes of this  
7 subparagraph, "asset" includes geological, geophysical, and well data and  
8 interpretations; or

9 (B) that has previously been placed in service in the state; an  
10 expenditure to acquire an asset is not excluded under this paragraph if not more  
11 than an immaterial portion of the asset meets a description under this  
12 paragraph.

13 **Sec. 43.55.024. Additional nontransferable tax credits.** (a) For a calendar  
14 year for which a producer's tax liability under AS 43.55.011(e) on oil and gas  
15 produced from leases or properties outside the Cook Inlet sedimentary basin and south  
16 of 68 degrees North latitude exceeds zero before application of any credits under this  
17 chapter, a producer that is qualified under (c) of this section may apply a tax credit  
18 against that liability of not more than \$6,000,000.

19 (b) A producer may not take a tax credit under this section for any calendar  
20 year after the later of

21 (1) 2016; or

22 (2) the ninth calendar year after the calendar year during which the  
23 producer first has commercial oil or gas production before May 1, 2016, from at least  
24 one lease or property in the state outside the Cook Inlet sedimentary basin and south of  
25 68 degrees North latitude, if the producer did not have commercial oil or gas  
26 production from a lease or property in the state outside the Cook Inlet sedimentary  
27 basin and south of 68 degrees North latitude before April 1, 2006.

28 (c) On written application by a producer, including any information the  
29 department may require, the department shall determine whether the producer  
30 qualifies under this section for a calendar year. To qualify under this section, a  
31 producer must demonstrate that its operation in the state or its ownership of an interest

1 in a lease or property in the state as a distinct producer entity would not result in the  
2 division among multiple producer entities of any production tax liability under  
3 AS 43.55.011(e) that reasonably would be expected to be attributed to a single  
4 producer entity if the tax credit provisions of (a) of this section did not exist.

5 (d) A tax credit authorized by this section may not be applied to reduce a  
6 producer's tax liability for any calendar year under AS 43.55.011(e) on oil and gas  
7 produced from leases or properties outside the Cook Inlet sedimentary basin and south  
8 of 68 degrees North latitude below zero.

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

11 (f) In (a) and (b) of this section, and only as to expenditures incurred to explore  
12 for an oil or gas deposit located within land in which an explorer does not own a  
13 working interest, the term "producer" includes "explorer."

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

15 (a) Subject to the terms and conditions of this section, [ON OIL AND GAS  
16 PRODUCED ON OR AFTER JULY 1, 2004, FROM AN OIL AND GAS LEASE,  
17 OR ON GAS PRODUCED FROM A GAS ONLY LEASE,] a credit against the  
18 production tax due under AS 43.55.011(e) [THIS CHAPTER] is allowed for  
19 exploration expenditures that qualify under (b) of this section in an amount equal to  
20 one of the following:

21 (1) 20 percent of the total exploration expenditures that qualify only  
22 under (b) and (c) of this section;

23 (2) 20 percent of the total exploration expenditures for work performed  
24 before July 1, 2007, and that qualify only under (b) and (d) of this section;

25 (3) 40 percent of the total exploration expenditures that qualify under  
26 (b), (c), and (d) of this section; or

27 (4) 40 percent of the total exploration expenditures that qualify only  
28 under (b) and (c) of this section.

29 \* Sec. 15. AS 43.55.025(b) is amended to read:

30 (b) To qualify for the production tax credit under (a) of this section, an  
31 exploration expenditure must be incurred for work performed on or after July 1, 2003.

1 and before July 1, 2016 [2007], except that an exploration expenditure for a Cook Inlet  
2 prospect must be incurred for work performed on or after July 1, 2005, [AND  
3 BEFORE JULY 1, 2010, AND EXCEPT THAT AN EXPLORATION  
4 EXPENDITURE, IN WHOLE OR IN PART, SOUTH OF 68 DEGREES, 15  
5 MINUTES, NORTH LATITUDE, AND NOT PART OF A COOK INLET  
6 PROSPECT MUST BE INCURRED FOR WORK PERFORMED ON OR AFTER  
7 JULY 1, 2003, AND BEFORE JULY 1, 2010,] and

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

10 (2) if for an exploration well,

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

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

15 (C) must be for goods, services, or rentals of personal property  
16 reasonably required for the surface preparation, drilling, casing, cementing,  
17 and logging of an exploration well, and, in the case of a dry hole, for the  
18 expenses required for abandonment if the well is abandoned within 18 months  
19 after the date the well was spudded;

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

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

28 \* Sec. 16, AS 43.55.025(f) is amended to read:

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

30 (1) an explorer shall, in a form prescribed by the department and  
31 within six months of the completion of the exploration activity, claim the credit and

1 submit information sufficient to demonstrate to the department's satisfaction that the  
2 claimed exploration expenditures qualify under this section:

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

4 (A) to notify the Department of Natural Resources, within 30  
5 days after completion of seismic or geophysical data processing, completion of  
6 a well, or filing of a claim for credit, whichever is the latest, for which  
7 exploration costs are claimed, of the date of completion and submit a report to  
8 that department describing the processing sequence and providing a list of data  
9 sets available; if, under (c)(2)(B) of this section, an explorer submits a claim  
10 for a credit for expenditures for an exploration well that is located within three  
11 miles of a well already drilled for oil and gas, in addition to the submissions  
12 required under (1) of this subsection, the explorer shall submit the information  
13 necessary for the commissioner of natural resources to evaluate the validity of  
14 the explorer's claim that the well is directed at a distinctly separate exploration  
15 target, and the commissioner of natural resources shall, upon receipt of all  
16 evidence sufficient for the commissioner to evaluate the explorer's claim, make  
17 that determination within 60 days;

18 (B) to provide to the Department of Natural Resources, within  
19 30 days after the date of a request, specific data sets, ancillary data, and reports  
20 identified in (A) of this paragraph;

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

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

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

31 (5) if the department is satisfied that the explorer's claimed

1 expenditures are qualified under this section, the department shall issue to the explorer  
2 a production tax credit certificate for the amount of credit to be allowed against  
3 production taxes due under AS 43.55.011(e) [THIS CHAPTER; HOWEVER,  
4 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE  
5 DEPARTMENT MAY NOT ISSUE TO AN EXPLORER A PRODUCTION TAX  
6 CREDIT CERTIFICATE IF THE TOTAL OF PRODUCTION TAX CREDITS  
7 SUBMITTED FOR COOK INLET PRODUCTION, BASED ON EXPLORATION  
8 EXPENDITURES FOR WORK PERFORMED DURING THE PERIOD  
9 DESCRIBED IN (b) OF THIS SECTION FOR THAT PRODUCTION, THAT HAVE  
10 BEEN APPROVED BY THE DEPARTMENT EXCEEDS \$20,000,000].

11 \* Sec. 17. AS 43.55.025(h) is amended to read:

12 (h) A producer that purchases a production tax credit certificate may apply the  
13 credits against its production tax liability under AS 43.55.011(e) [THIS CHAPTER].  
14 Regardless of the price the producer paid for the certificate, the producer may receive  
15 a credit against its production tax liability for the full amount of the credit, but for not  
16 more than the amount for which the certificate is issued. A production tax credit  
17 allowed under this section may not be applied more than once.

18 \* Sec. 18. AS 43.55.025(i) is amended to read:

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

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

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

27 \* Sec. 19. AS 43.55.030(a) is amended to read:

28 (a) The [TAX SHALL BE PAID TO THE DEPARTMENT AND THE]  
29 person paying the tax shall file with the department on March 31 of the year  
30 following the calendar year for which the tax was levied [AT THE TIME THE  
31 TAX IS REQUIRED TO BE PAID] a statement, under oath, in a form [ON FORMS]

1 prescribed by [OR ACCEPTABLE TO] the department, giving, with other  
2 information required, the following:

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

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

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

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

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

16 (6) the producer's base production under AS 43.55.011(f); and

17 (7) the producer's lease expenditures and adjustments as  
18 calculated under AS 43.55.160 - 43.55.170 [IF SOLD IN THE STATE].

19 \* Sec. 20. AS 43.55.030(d) is amended to read:

20 (d) Reports by or on behalf of the producer are delinquent the first day  
21 following the day the report [TAX] is due. [EACH PRODUCER IS SUBJECT TO A  
22 PENALTY OF \$25 A DAY FOR EACH LEASE OR PROPERTY UPON WHICH  
23 THE REPORT IS NOT FILED. THE PENALTY FOR FAILURE TO FILE A  
24 REPORT IS IN ADDITION TO THE PENALTY FOR DELINQUENT TAXES,  
25 AND IS A LIEN AGAINST THE ASSETS OF THE PRODUCER.]

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

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

29 (1) require a person engaged in production and the agent or employee  
30 of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil  
31 or gas to furnish, whether by the filing of regular statements or reports or

1 otherwise, additional information that is considered by the department as necessary to  
 2 compute the amount of the tax; notwithstanding any contrary provision of law, the  
 3 disclosure of additional information under this paragraph to the producer  
 4 obligated to pay the tax does not violate AS 40.25.100(a) or AS 43.05.230(a);  
 5 before disclosing information under this paragraph that is otherwise required to  
 6 be held confidential under AS 40.25.100(a) or AS 43.05.230(a), the department  
 7 shall

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

11 (B) impose appropriate conditions limiting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17                   **Sec. 43.55.160. Determination of production tax value of oil and gas.** (a)  
18           Except as provided in (b) of this section, for the purposes of

19                           (1) AS 43.55.011(e), the annual production tax value of the taxable

20                                   (A) oil and gas produced during a calendar year from a lease or  
21           property in the state that includes land at or north of 68 degrees North latitude  
22           is the gross value at the point of production of the oil and gas taxable under  
23           AS 43.55.011(e) and produced by the producer from that lease or property, less  
24           the producer's lease expenditures under AS 43.55.165 for the calendar year  
25           applicable to the oil and gas produced by the producer from that lease or  
26           property, as adjusted under AS 43.55.170;

27                                   (B) oil and gas produced during a calendar year from a lease or  
28           property in the state outside the Cook Inlet sedimentary basin and all parts of  
29           which are south of 68 degrees North latitude is the gross value at the point of  
30           production of the oil and gas taxable under AS 43.55.011(e) and produced by  
31           the producer from that lease or property, less the producer's lease expenditures

1 under AS 43.55.165 for the calendar year applicable to the oil and gas  
 2 produced by the producer from that lease or property, as adjusted under  
 3 AS 43.55.170;

4 (C) oil produced during a calendar year from a lease or  
 5 property in the Cook Inlet sedimentary basin is the gross value at the point of  
 6 production of the oil taxable under AS 43.55.011(e) and produced by the  
 7 producer from that lease or property, less the producer's lease expenditures  
 8 under AS 43.55.165 for the calendar year applicable to the oil produced by the  
 9 producer from that lease or property, as adjusted under AS 43.55.170;

10 (D) gas produced during a calendar year from a lease or  
 11 property in the Cook Inlet sedimentary basin is the gross value at the point of  
 12 production of the gas taxable under AS 43.55.011(e) and produced by the  
 13 producer from that lease or property, less the producer's lease expenditures  
 14 under AS 43.55.165 for the calendar year applicable to the gas produced by the  
 15 producer from that lease or property, as adjusted under AS 43.55.170;

16 (2) AS 43.55.011(g), the monthly production tax value of the taxable

17 (A) oil and gas produced during a month from a lease or  
 18 property in the state that includes land at or north of 68 degrees North latitude  
 19 is the gross value at the point of production of the oil and gas taxable under  
 20 AS 43.55.011(g) and produced by the producer from that lease or property, less  
 21 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar  
 22 year applicable to the oil and gas produced by the producer from that lease or  
 23 property, as adjusted under AS 43.55.170;

24 (B) oil and gas produced during a month from a lease or  
 25 property in the state outside the Cook Inlet sedimentary basin and all parts of  
 26 which are south of 68 degrees North latitude is the gross value at the point of  
 27 production of the oil and gas taxable under AS 43.55.011(g) and produced by  
 28 the producer from that lease or property, less 1/12 of the producer's lease  
 29 expenditures under AS 43.55.165 for the calendar year applicable to the oil and  
 30 gas produced by the producer from that lease or property, as adjusted under  
 31 AS 43.55.170;

1 (C) oil produced during a month from a lease or property in the  
2 Cook Inlet sedimentary basin is the gross value at the point of production of  
3 the oil taxable under AS 43.55.011(g) and produced by the producer from that  
4 lease or property, less 1/12 of the producer's lease expenditures under  
5 AS 43.55.165 for the calendar year applicable to the oil produced by the  
6 producer from that lease or property, as adjusted under AS 43.55.170;

7 (D) gas produced during a month from a lease or property in  
8 the Cook Inlet sedimentary basin is the gross value at the point of production  
9 of the gas taxable under AS 43.55.011(g) and produced by the producer from  
10 that lease or property, less 1/12 of the producer's lease expenditures under  
11 AS 43.55.165 for the calendar year applicable to the gas produced by the  
12 producer from that lease or property, as adjusted under AS 43.55.170.

13 (b) A production tax value calculated under (a) of this section may not be less  
14 than zero.

15 (c) Notwithstanding any contrary provision of AS 43.55.150, for purposes of  
16 calculating a monthly production tax value under (a)(2) of this section, the gross value  
17 at the point of production of the oil and gas taxable under AS 43.55.011(g) is  
18 calculated under regulations adopted by the department that provide for using an  
19 appropriate monthly share of the producer's costs of transportation for the calendar  
20 year.

21 (d) Irrespective of whether a producer produces taxable oil or gas during a  
22 calendar year or month, the producer is considered to have generated a positive  
23 production tax value if a calculation described in (a) of this section yields a positive  
24 number because the producer's adjusted lease expenditures for a calendar year under  
25 AS 43.55.165 and 43.55.170 are less than zero as a result of the producer's receiving a  
26 payment or credit under AS 43.55.170 or otherwise. An explorer that has taken a tax  
27 credit under AS 43.55.023(b) or that has obtained a transferable tax credit certificate  
28 under AS 43.55.023(d) for the amount of a tax credit under AS 43.55.023(b) is  
29 considered a producer, subject to the tax levied under AS 43.55.011(e), to the extent  
30 that the explorer generates a positive production tax value as the result of the  
31 explorer's receiving a payment or credit under AS 43.55.170.

1 (e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that  
2 would otherwise be deductible by a producer in a calendar year but whose deduction  
3 would cause an annual production tax value calculated under (a)(1) of this section of  
4 taxable oil or gas produced during the calendar year to be less than zero may be used  
5 to establish a carried-forward annual loss under AS 43.55.023(b). In this subsection,  
6 "producer" includes "explorer."

7 **Sec. 43.55.165. Lease expenditures.** (a) Except as provided under (c) - (e) of  
8 this section, for the purposes of AS 43.55.160, a producer's lease expenditures for a  
9 calendar year are the ordinary and necessary costs upstream of the point of production  
10 of oil and gas that are incurred during the calendar year by the producer after  
11 March 31, 2006, and that are direct costs of exploring for, developing, or producing oil  
12 or gas deposits located within the producer's leases or properties in the state or, in the  
13 case of land in which the producer does not own a working interest, that are direct  
14 costs of exploring for oil or gas deposits located within other land in the state. In  
15 determining whether costs are lease expenditures, the department shall consider,  
16 among other factors,

17 (1) the typical industry practices and standards in the state that  
18 determine the costs, other than items listed in (e) of this section, that an operator is  
19 allowed to bill a working interest owner that is not the operator, under unit operating  
20 agreements or similar operating agreements that were in effect before December 2,  
21 2005, and were subject to negotiation with at least one working interest owner with  
22 substantial bargaining power, other than the operator; and

23 (2) the standards adopted by the Department of Natural Resources that  
24 determine the costs, other than items listed in (e) of this section, that a lessee is  
25 allowed to deduct from revenue in calculating net profits under a lease issued under  
26 AS 38.05.180(f)(3)(B), (D), or (E).

27 (b) For purposes of (a) of this section,

28 (1) direct costs include

29 (A) an expenditure, when incurred, to acquire an item if the  
30 acquisition cost is otherwise a direct cost, notwithstanding that the expenditure  
31 may be required to be capitalized rather than treated as an expense for financial

1 accounting or federal income tax purposes;

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

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

8 (2) an activity does not need to be physically located on, near, or  
9 within the premises of the lease or property within which an oil or gas deposit being  
10 explored for, developed, or produced is located in order for the cost of the activity to  
11 be a cost upstream of the point of production of the oil or gas.

12 (c) Subject to (g) and (h) of this section, if the department finds that the  
13 pertinent provisions of a unit operating agreement or similar operating agreement are  
14 substantially consistent with the department's determinations and standards under (a)  
15 of this section concerning whether costs are lease expenditures, the department may  
16 authorize or require a producer, subject to conditions prescribed under regulations  
17 adopted by the department, to treat as that portion of its lease expenditures for a  
18 calendar year applicable to oil and gas produced from a lease or property in the state  
19 only

20 (1) the costs, other than items listed in (e) of this section, that are  
21 incurred by the operator during the calendar year and that

22 (A) are billable to the producer by the operator in accordance  
23 with the terms of the agreement to which that lease or property is subject;

24 (B) for a producer that is the operator, would be billable to the  
25 producer by the operator in accordance with the terms of the agreement to  
26 which that lease or property is subject if the producer were not the operator;

27 (C) would be billable to the producer by the operator in  
28 accordance with the terms of the agreement if that lease or property were  
29 subject to the agreement; or

30 (D) for a producer that is the operator, would be billable to the  
31 producer by the operator in accordance with the terms of the agreement if that

1 lease or property were subject to the agreement and if the producer were not  
2 the operator; and

3 (2) a reasonable percentage, as determined under regulations adopted  
4 by the department, of the costs that are billable under (1) of this subsection as an  
5 allowance for overhead expenses directly related to exploring for, developing, and  
6 producing oil or gas deposits located within the lease or property, to the extent those  
7 expenses are not billable under the agreement.

8 (d) Subject to (g) and (h) of this section, if the department makes the finding  
9 described in (c) of this section with respect to a unit operating agreement or similar  
10 operating agreement and, in addition, finds that at least one working interest owner  
11 party to the agreement, other than the operator, with substantial incentive and ability to  
12 effectively audit billings under the agreement in fact is effectively auditing billings  
13 under the agreement, the department may authorize or require a producer, subject to  
14 conditions prescribed under regulations adopted by the department, to treat as that  
15 portion of its lease expenditures for a calendar year applicable to oil and gas produced  
16 from a lease or property in the state only

17 (1) the cost, other than items listed in (e) of this section, that are  
18 incurred by the operator during the calendar year and that

19 (A) are billed to the producer by the operator under the  
20 agreement to which that lease or property is subject and are either not disputed  
21 by a working interest owner party to the agreement or are finally determined to  
22 be properly billable as a result of dispute resolution; or

23 (B) for a producer that is the operator, would be billable to the  
24 producer by the operator in accordance with the terms of the agreement to  
25 which that lease or property is subject if the producer were not the operator;  
26 and

27 (2) a reasonable percentage, as determined under regulations adopted  
28 by the department, of the costs that are billed under (1) of this subsection as an  
29 allowance for overhead expenses directly related to exploring for, developing, and  
30 producing oil or gas deposits located within the lease or property, to the extent those  
31 expenses are not billable under the agreement.

1 (e) For purposes of this section, lease expenditures do not include

2 (1) depreciation, depletion, or amortization;

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

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

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

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

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

11 (7) fines or penalties imposed by law;

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

15 (9) donations;

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

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

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

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

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

28 (15) a tax levied under AS 43.55.011;

29 (16) the portion of costs incurred for dismantlement, removal,  
30 surrender, or abandonment of a facility, pipeline, well pad, platform, or other  
31 structure, or for the restoration of a lease, field, unit, area, body of water, or right-of-

1 way in conjunction with dismantlement, removal, surrender, or abandonment, that is  
2 attributable to production of oil or gas occurring before April 1, 2006; the portion is  
3 calculated as a ratio of the amount of oil and gas production in barrels of oil equivalent  
4 associated with the facility, pipeline, well pad, platform, or other structure, lease, field,  
5 unit, area, body of water, or right-of-way occurring before April 1, 2006, to the total  
6 amount of oil and gas production in barrels of oil equivalent associated with that  
7 facility, pipeline, well pad, platform, or other structure, lease, field, unit, area, body of  
8 water, or right-of-way through the end of the calendar month before commencement  
9 of the dismantlement, removal, surrender, or abandonment; a cost is not excluded  
10 under this paragraph if the dismantlement, removal, surrender, or abandonment for  
11 which the cost is incurred is undertaken for the purpose of replacing, renovating, or  
12 improving the facility, pipeline, well pad, platform, or other structure; for the purposes  
13 of this paragraph, "barrel of oil equivalent" means

14 (A) in the case of oil, one barrel;

15 (B) in the case of gas, 6,000 cubic feet;

16 (17) losses or damages resulting from an unpermitted oil discharge that  
17 is not confined to a pad, platform, or other structure, or costs to contain, clean up, or  
18 remediate that unpermitted oil discharge, to the extent that those costs exceed the  
19 routine costs of operation for a producer or explorer that would otherwise be incurred  
20 as lease expenditures in the absence of the unpermitted oil discharge; this paragraph  
21 does not apply to the cost of developing and maintaining an oil discharge prevention  
22 and contingency plan under AS 46.04.030;

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

25 (f) For purposes of AS 43.55.023 (a) and (b) and only as to expenditures  
26 incurred to explore for an oil or gas deposit located within land in which an explorer  
27 does not own a working interest, the term "producer" in this section includes  
28 "explorer."

29 (g) The department shall specify or approve a reasonable allocation method  
30 for determining the portion of a cost that is appropriately treated as a lease expenditure  
31 under this section if a cost that would otherwise constitute a lease expenditure under

1 this section is incurred to explore for, develop, or produce

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

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

6 (h) The department shall adopt regulations that provide for reasonable  
7 methods of allocating costs between oil and gas and between leases or properties in  
8 those circumstances where the determination of the lease expenditures that are  
9 applicable to oil or to gas, or that are applicable to oil and gas produced from different  
10 leases or properties, requires an allocation of costs.

11 (i) The department may adopt regulations that establish additional standards  
12 necessary to carrying out the purposes of this section and AS 43.55.170, including the  
13 incorporation of the concepts of 26 U.S.C. 482 (Internal Revenue Code), as amended,  
14 the related or accompanying regulations of that provision, and any ruling or guidance  
15 issued by the United States Internal Revenue Service that relates to that provision.

16 (j) For purposes of this section,

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

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

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

24 **Sec. 43.55.170. Adjustments to lease expenditures.** (a) Unless the payment  
25 or credit has already been subtracted in calculating billable or billed costs under  
26 AS 43.55.165(e) or (d), a producer's lease expenditures under AS 43.55.165 must be  
27 adjusted by subtracting payments or credits, other than tax credits, received by the  
28 producer or by an operator acting for the producer for

29 (1) the use by another person of a production facility in which the  
30 producer has an ownership interest or the management by the producer of a production  
31 facility under a management agreement providing for the producer to receive a

1 management fee:

2 (2) a reimbursement or similar payment that offsets the producer's  
3 lease expenditures, including an insurance recovery from a third-party insurer and a  
4 payment from the state or federal government for reimbursement of the producer's  
5 upstream costs, including costs for gathering, separating, cleaning, dehydration,  
6 compressing, or other field handling associated with the production of oil or gas  
7 upstream of the point of production:

8 (3) the sale or other transfer of

9 (A) an asset, including geological, geophysical, or well data or  
10 interpretations, acquired by the producer as a result of a lease expenditure or an  
11 expenditure that would be a lease expenditure if it were incurred after  
12 March 31, 2006; for purposes of this subparagraph,

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

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

21 (B) oil or gas

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

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

26 (b) Except as otherwise provided under this subsection, if one or more  
27 payments or credits subject to this section are received by a producer or by an operator  
28 acting for the producer during a calendar year and if either the total amount of the  
29 payments or credits exceeds the amount of the producer's applicable lease  
30 expenditures for that calendar year or the producer has no lease expenditures for that  
31 calendar year, the producer shall nevertheless subtract those payments or credits from

1 the lease expenditures or from zero, respectively, and the producer's applicable  
2 adjusted lease expenditures for that calendar year are a negative number and shall be  
3 applied to the pertinent calculation under AS 43.55.160(a) as a negative number.

4 (c) For purposes of AS 43.55.023(a) and (b) and only as to expenditures  
5 incurred to explore for an oil or gas deposit located within land in which an explorer  
6 does not own a working interest, the term "producer" in this section includes  
7 "explorer."

8 **Sec. 43.55.180. Required report.** (a) The department shall study

9 (1) the effects of the provisions of this chapter on oil and gas  
10 exploration, development, and production in the state, on investment expenditures for  
11 oil and gas exploration, development, and production in the state, on the entry of new  
12 producers into the oil and gas industry in the state, on state revenue, and on tax  
13 administration and compliance, giving particular attention to the tax rates provided  
14 under AS 43.55.011, the tax credits provided under AS 43.55.023 – 43.55.025, and the  
15 deductions for and adjustments to lease expenditures provided under AS 43.55.160 –  
16 43.55.170; and

17 (2) the effects of the tax rates under AS 43.55.011(i) on state revenue  
18 and on oil and gas exploration, development, and production on private land, and the  
19 fairness of these tax rates for private landowners.

20 (b) The department shall prepare a report on or before the first day of the 2011  
21 regular session of the legislature on the results of the study made under (a) of this  
22 section, including recommendations as to whether any changes should be made to this  
23 chapter. The department shall notify the legislature that the report prepared under this  
24 subsection is available.

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

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

29 (b) The surcharge imposed by (a) of this section is in addition to the tax  
30 imposed by AS 43.55.011 and is due on the last day of the month on oil produced  
31 from each lease or property during the preceding month. The surcharge [SHALL

1 BE PAID IN THE SAME MANNER AS THE TAX IMPOSED BY AS 43.55.011 -  
2 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.300 -  
3 43.55.310.

4 (c) A producer of oil shall make a report [REPORTS] of production on  
5 March 31 of the year following the calendar year of production and in the same  
6 manner and under the same penalties as required under AS 43.55.011 - 43.55.180  
7 [AS 43.55.011 - 43.55.150].

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

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

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

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

16 (b) The surcharge imposed by (a) of this section is in addition to the tax  
17 imposed by AS 43.55.011 and is due on the last day of the month on oil produced  
18 from each lease or property during the preceding month. The surcharge [SHALL  
19 BE PAID IN THE SAME MANNER AS THE TAX IMPOSED BY AS 43.55.011 -  
20 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.201 -  
21 43.55.231.

22 (c) A producer of oil shall make a report [REPORTS] of production on  
23 March 31 of the year following the calendar year of production and in the same  
24 manner and under the same penalties as required under AS 43.55.011 - 43.55.180  
25 [AS 43.55.011 - 43.55.150].

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

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

30 \* Sec. 30. AS 43.55.900(6) is repealed and reenacted to read:

31 (6) "gas" means

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

2 (B) all hydrocarbons that

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

5 (ii) exist in a gaseous phase at the completion of  
6 mechanical separation and any gas processing in a gas processing plant;  
7 and

8 (C) all other hydrocarbons produced from a well not defined as  
9 oil;

10 \* Sec. 31. AS 43.55.900(7) is repealed and reenacted to read:

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

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

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

16 \* Sec. 32. AS 43.55.900(10) is repealed and reenacted to read:

17 (10) "oil" means

18 (A) crude petroleum oil; and

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

21 \* Sec. 33. AS 43.55.900 is amended by adding new paragraphs to read:

22 (17) "British thermal unit" means the quantity of heat required to raise  
23 the temperature of one pound of water from 58.5 degrees Fahrenheit to 59.5 degrees  
24 Fahrenheit at a constant pressure of one atmosphere;

25 (18) "BTU equivalent barrel" means

26 (A) in the case of oil, one barrel;

27 (B) in the case of gas, the amount of gas that has a heating  
28 value of 6,000,000 British thermal units;

29 (19) "Cook Inlet sedimentary basin" has the meaning given in  
30 regulations adopted to implement AS 38.05.180(f)(4);

31 (20) "explorer" means a person who, in exploring for new oil or gas

1 reserves, incurs expenditures:

2 (21) "gas processing"

3 (A) means processing a gaseous mixture of hydrocarbons

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

8 (ii) for the purpose of extracting and recovering liquid  
9 hydrocarbons;

10 (B) does not include gas treatment;

11 (22) "gas processing plant" means a facility that

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

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

16 (23) "gas treatment"

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

20 (B) includes incidentally removing liquid hydrocarbons from  
21 the gas;

22 (C) does not include

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

25 (ii) the scrubbing of liquids from gas to facilitate gas  
26 processing;

27 (24) "heating value" means the gross number of BTUs evolved by  
28 complete combustion of an amount of gas;

29 (25) "landowner's royalty interest" means

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

31 (B) a royalty interest that is

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

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

5 (26) "oil and gas lease" includes an oil and gas lease, a gas only lease,  
6 and an oil only lease;

7 (27) "point of production" means

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

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

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

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

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

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

30 \* Sec. 34. AS 43.55.011(a), 43.55.011(b), 43.55.011(c), 43.55.012, 43.55.013, 43.55.016,  
31 43.55.025(k)(1), 43.55.025(k)(3), 43.55.900(1), 43.55.900(8), 43.55.900(11), 43.55.900(12),

1 and 43.55.900(16) are repealed.

2 \* **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 APPLICABILITY. (a) Sections 5, 7 - 10, 12 - 14, 16 - 20, 24, and 26 - 34 of this Act  
5 and AS 43.55.160 - 43.55.170, enacted by sec. 25 of this Act, apply to oil and gas produced  
6 after March 31, 2006.

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

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

11 TRANSITIONAL PROVISIONS. (a) Notwithstanding any contrary provision of  
12 AS 43.55.023(i), enacted by sec. 13 of this Act, for oil and gas produced after March 31,  
13 2006, and before January 1, 2007, the phrase "20 percent" in AS 43.55.023(i)(2), enacted by  
14 sec. 13 of this Act, shall be replaced by the phrase "15 percent."

15 (b) For oil and gas produced before April 1, 2006, the provisions of AS 43.55, and  
16 regulations adopted under AS 43.55, that were in effect before April 1, 2006, and that were  
17 applicable to the oil and gas continue to apply to that oil and gas.

18 (c) Notwithstanding any contrary provision of AS 43.55.020(a), as repealed and  
19 reenacted by sec. 7 of this Act, for oil and gas produced after March 31, 2006, and before  
20 January 1, 2007,

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

25 (2) the amount, if any, of the taxes levied by AS 43.55.011(e), (g), and (i),  
26 enacted by sec. 5 of this Act, net of any credits applied as allowed by law, that exceeds the  
27 amount due under (1) of this subsection, is due on March 31, 2007.

28 (d) Notwithstanding any contrary provision of AS 43.55.030(a), as amended by sec.  
29 19 of this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007, the  
30 person paying the tax shall file with the Department of Revenue, at the time an amount of tax  
31 is due

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

3 (2) under (c)(2) of this section, the statement required under AS 43.55.030(a),  
4 as amended by sec. 19 of this Act.

5 (c) Notwithstanding any contrary provision of AS 43.55.201(a) or (b), as amended by  
6 sec. 26 of this Act, or AS 43.55.300(a) or (b), as amended by sec. 28 of this Act, for oil  
7 produced after March 31, 2006, and before January 1, 2007,

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

12 (2) the amount, if any, of the surcharges imposed under AS 43.55.201(a), as  
13 amended by sec. 26 of this Act, and AS 43.55.300(a), as amended by sec. 28 of this Act, that  
14 exceeds the amount due under (1) of this subsection, is due on March 31, 2007.

15 (f) Notwithstanding any contrary provision of AS 43.55.201(e), as amended by sec.  
16 26 of this Act, or AS 43.55.300(c), as amended by sec. 28 of this Act, for oil produced after  
17 March 31, 2006, and before January 1, 2007, at the time an amount of surcharge is due

18 (1) under (e)(1) of this section, the producer shall file the report of production  
19 required under former AS 43.55.201(e) and 43.55.300(c), as those provisions read on  
20 March 31, 2006; and

21 (2) under (e)(2) of this section, the producer shall file on March 31, 2007, the  
22 report of production otherwise required under AS 43.55.201(e), as amended by sec. 26 of this  
23 Act, and AS 43.55.300(c), as amended by sec. 28 of this Act.

24 (g) For purposes of taxes to be calculated and due under (c)(1) of this section and  
25 statements to be filed under (d)(1) of this section, regulations that were adopted by the  
26 Department of Revenue under AS 43.55, as the provisions of that chapter read on March 31,  
27 2006, and that were in effect on that date apply to those taxes and statements.

28 (h) Notwithstanding any contrary provision of AS 43.55.160(a)(2), enacted by sec. 25  
29 of this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007, the  
30 phrase "1/12" in AS 43.55.160(a)(2)(A) - (D), enacted by sec. 25 of this Act, shall be  
31 replaced by the phrase "1/9."

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

3 TRANSITION: RETROACTIVITY OF REGULATIONS. Notwithstanding any  
4 contrary provision of AS 44.62.240, a regulation adopted by the Department of Revenue to  
5 implement, interpret, make specific, or otherwise carry out the provisions of secs. 5, 7 - 10, 12  
6 - 14, 16 - 20, 24 - 34, and 36 of this Act may apply retroactively to April 1, 2006, if the  
7 Department of Revenue expressly designates in the regulation that the regulation applies  
8 retroactively to that date.

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

11 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the  
12 heading of

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

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

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

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

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

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

24 RETROACTIVITY OF PROVISIONS OF ACT. Sections 5, 7 - 10, 12 - 14, 16 - 19,  
25 and 24 - 36 of this Act are retroactive to April 1, 2006.

26 \* Sec. 40. This Act takes effect immediately under AS 01.10.070(c).

7/30 2:15 p.m.

*Superceded*

\_\_\_\_\_ BILL NO. \_\_\_\_\_

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - THIRD SPECIAL SESSION

BY

Offered:

Sponsor(s):

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the production tax on oil and gas and to conservation surcharges on  
 2 oil; relating to criminal penalties for violating conditions governing access to and use of  
 3 confidential information relating to the production tax; amending the definition of 'gas'  
 4 as that definition applies in the Alaska Stranded Gas Development Act; making  
 5 conforming amendments; and providing for an effective date."

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

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

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

12 (b) It is the intent of the legislature that the division or other unit of the Department of  
 13 Environmental Conservation assigned responsibility for administration of the programs under

1 AS 46.08 that are principally supported by the conservation surcharges on oil levied under  
2 AS 43.55.201 - 43.55.299 and 43.55.300 - 43.55.310

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

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

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

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

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

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

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

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

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

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

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

1 (Internal Revenue Code); and

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

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

5 (e) There is levied on the producer of oil or gas a tax for all oil and gas  
6 produced each calendar year from each lease or property in the state, less any oil and  
7 gas the ownership or right to which is exempt from taxation or constitutes a  
8 landowner's royalty interest. Except as otherwise provided under (j) and (k) of this  
9 section, the tax is equal to the annual production tax value of the taxable oil and gas as  
10 calculated under AS 43.55.160 multiplied by the tax rate determined under (f) of this  
11 section.

12 (f) For the purposes of (e) of this section,

13 (1) the tax rate for a calendar year under (e) of this section is the  
14 weighted average of the percentage rate under (2) of this subsection applicable to the  
15 producer's base production, if any, for the calendar year and the percentage rate under  
16 (3) of this subsection applicable to the producer's incremental production, if any, for  
17 the calendar year, with each percentage rate weighted proportionally to the amount of  
18 the production to which it applies; however, the tax rate for 2006, 2007, and 2008 may  
19 not exceed 22 1/2 percent;

20 (2) the percentage rate for each year applicable to a producer's base  
21 production is 25 percent;

22 (3) the percentage rate applicable to a producer's incremental  
23 production is

24 (A) for 2006 through and including 2011, 15 percent;

25 (B) for 2012 through and including 2030, one-half percentage  
26 point greater than the percentage rate for the immediately preceding year;

27 (C) for 2031 and later years, 25 percent;

28 (4) except as otherwise provided under (6) of this subsection, a  
29 producer's base production

30 (A) for a calendar year earlier than 2031 is

31  $.75 \times 1P \times (.95)^{\exp(n)}$