

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3112

1 (B) a royalty interest that is

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

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

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

8 (24) "point of production" means

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

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

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

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

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

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

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

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2 and 43.55.900(16) are repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 21 May 2006 TIME: 4:55pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 7

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

NOTES: Final Please

CS SB 2001 (FIN) 24-GS2094\G

Bullock 5/21/06

plus 6 amendments - attached

Thanks

Mindy

Amendment #1
adopted
24-GS2094A
conceptual

1 exceed

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

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

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

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

12 (i) July 31, 2013; or

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

18 (B) more than once; or

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATE FINANCE COMMITTEE
5/20/2006 COMMITTEE ACTION

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

Conceptual

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

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

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

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

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

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

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

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

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

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

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

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

SENATE FINANCE COMMITTEE

5/20/2006

COMMITTEE ACTION

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

SB 305 page 5 line 1

delete: .002

insert: .0015

SENATE FINANCE COMMITTEE
5/20/2006 COMMITTEE ACTION

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

conceptual
 22.5% tax rate
 retain 20% credit rate

SENATE FINANCE COMMITTEE

5/20/2006

COMMITTEE ACTION

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

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

Conceptual Amendment #1

SB 2001
24-GS2094\A

Offered at Senate Finance Committee

Offered By: _____

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

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

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

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

Amendment #6

Conceptual Amendment #6

SB 2001
24-GS2094A

Offered at Senate Finance Committee

Offered By: Sens Bunde & Hoffman

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

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

SENATE FINANCE COMMITTEE
5/29/2006 COMMITTEE ACTION

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

Effective date of tax

April 1, 2006

Conceptual



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 20 May 2006 TIME: 2:00pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 6

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

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

plus amendments - attached

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

Thanks
Mindy

Please deliver to

Adopted

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

AMENDMENT

SB 2001
24-GS2094\G

Offered at Senate Finance Committee

Offered By: Sen. Green

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

renumber sections accordingly

SENATE FINANCE COMMITTEE
5/21 / 2006 COMMITTEE ACTION

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

Adopted

SENATE FINANCE
COMMITTEE
Amendment # #8
To Bill Number: SB 2001
Sponsor: Green
Date: 5/21/06 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE

BY Sen. Green

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

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

2 Insert "However, application of this subsection may not, when added to the tax levied
3 under (e) of this section, impose a tax levy of more than 50 percent of the production tax
4 value of taxable oil and gas as calculated under AS 43.55 160."
5

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

7 Delete all material

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

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

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

SENATE FINANCE COMMITTEE
5/21 / 2006 COMMITTEE ACTION

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

Adopted

SENATE FINANCE
COMMITTEE

Amendment # #9

To Bill Number: SB 2001

Sponsor: Green

Date: 5/24/00 Logged by Mindy

AMENDMENT

SB 2001
24-GS2094\G

Offered at Senate Finance Committee

Offered By: Sen. Green

Page 4, line 4

"[6.67] 11.25 percent of the gross"

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

SENATE FINANCE COMMITTEE
5/21/2006 COMMITTEE ACTION

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

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

A M E N D M E N T

SB 2001
24-GS2094\G

Offered at Senate Finance Committee

Offered By: Sen. Green

Page 20, lines 20-28

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

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

SENATE FINANCE COMMITTEE
5/21 / 2006 COMMITTEE ACTION

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

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

AMENDMENT

SB 2001
24-GS2094\G

Offered at Senate Finance Committee

Offered By: Sen. Green

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

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

NOTE: See attached
language in red to be deleted

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

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

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

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

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

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

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

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

delete

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

SENATE FINANCE COMMITTEE

5/21/2006

COMMITTEE ACTION

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

adopted

24-GS2094G
Bullock
5/21/06

CS FOR SENATE BILL NO. 2001(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

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

delete

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

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

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

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	<i>See analysis section</i>					
-------------------------------	-----------------------------	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 275.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Relative to Status Quo

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

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

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

Approved by: Jerry Burnett
Agency: Department of Revenue

Date 5/20/2006

FISCAL NOTE # 2

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. SB 2001

ANALYSIS CONTINUATION

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

The bill would be effective July 1, 2006.

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

The cost assumptions are as follows:

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

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

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

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

FISCAL NOTE # 2

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. SB 2001

ANALYSIS CONTINUATION Millions of Dollars

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

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

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

FISCAL NOTE

3

STATE OF ALASKA
2006 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES () *See analysis section*

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Full-time	7	7	7	7	7	7
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Relative to Status Quo

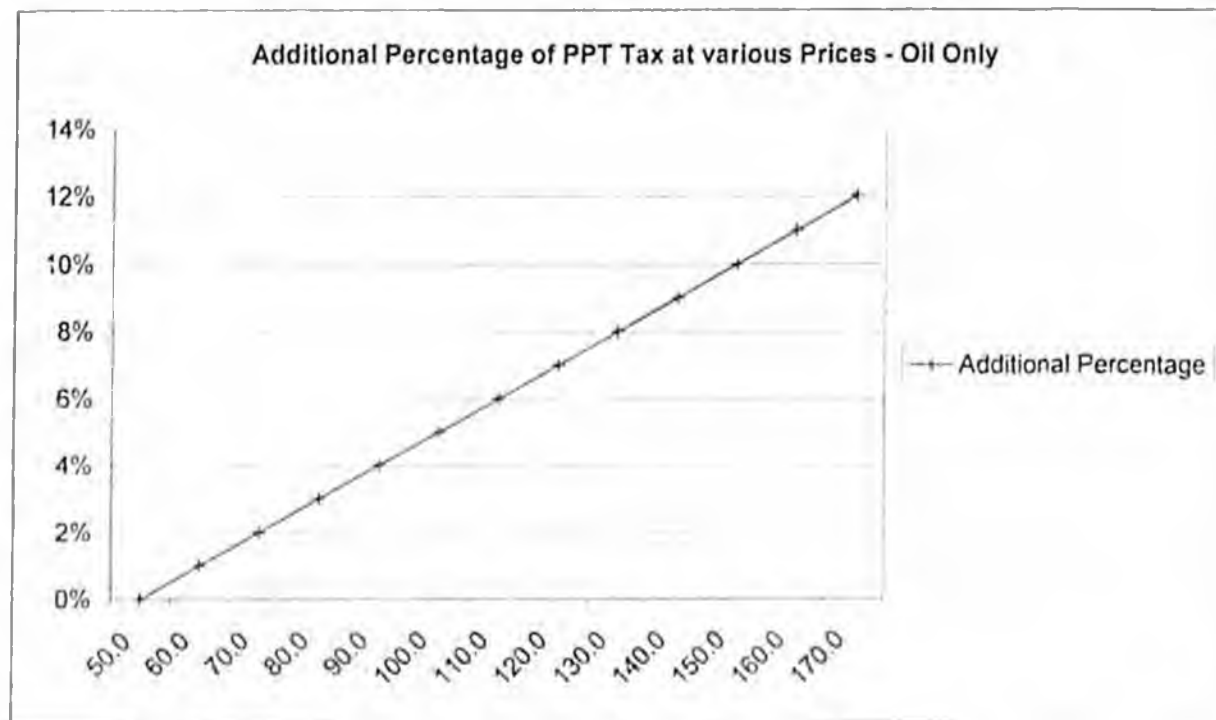
This bill would amend the oil and gas production tax by basing the tax on the net value of the oil and gas. The net value is the wellhead value (net of royalty) less all qualified lease expenditures, including capital and operating costs, and property taxes. The net income would be subject to a 20% tax,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

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

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

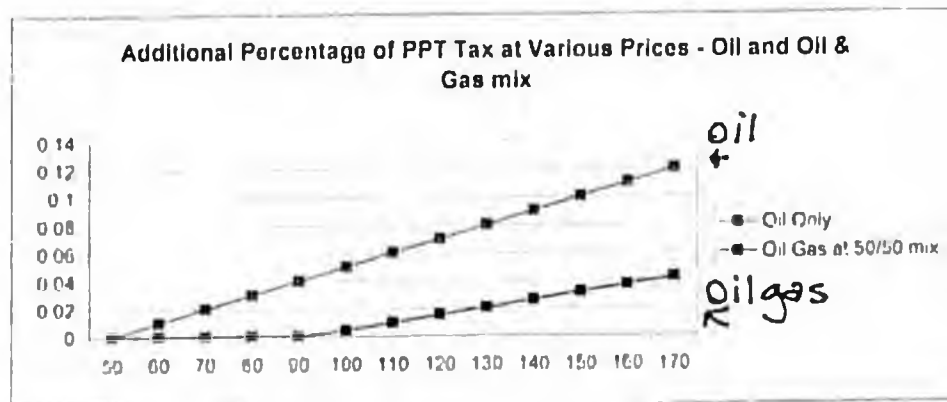
Progressivity
Base Case - Oil Only

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



Progressivity
Econ One Case - 50% Gas and Oil

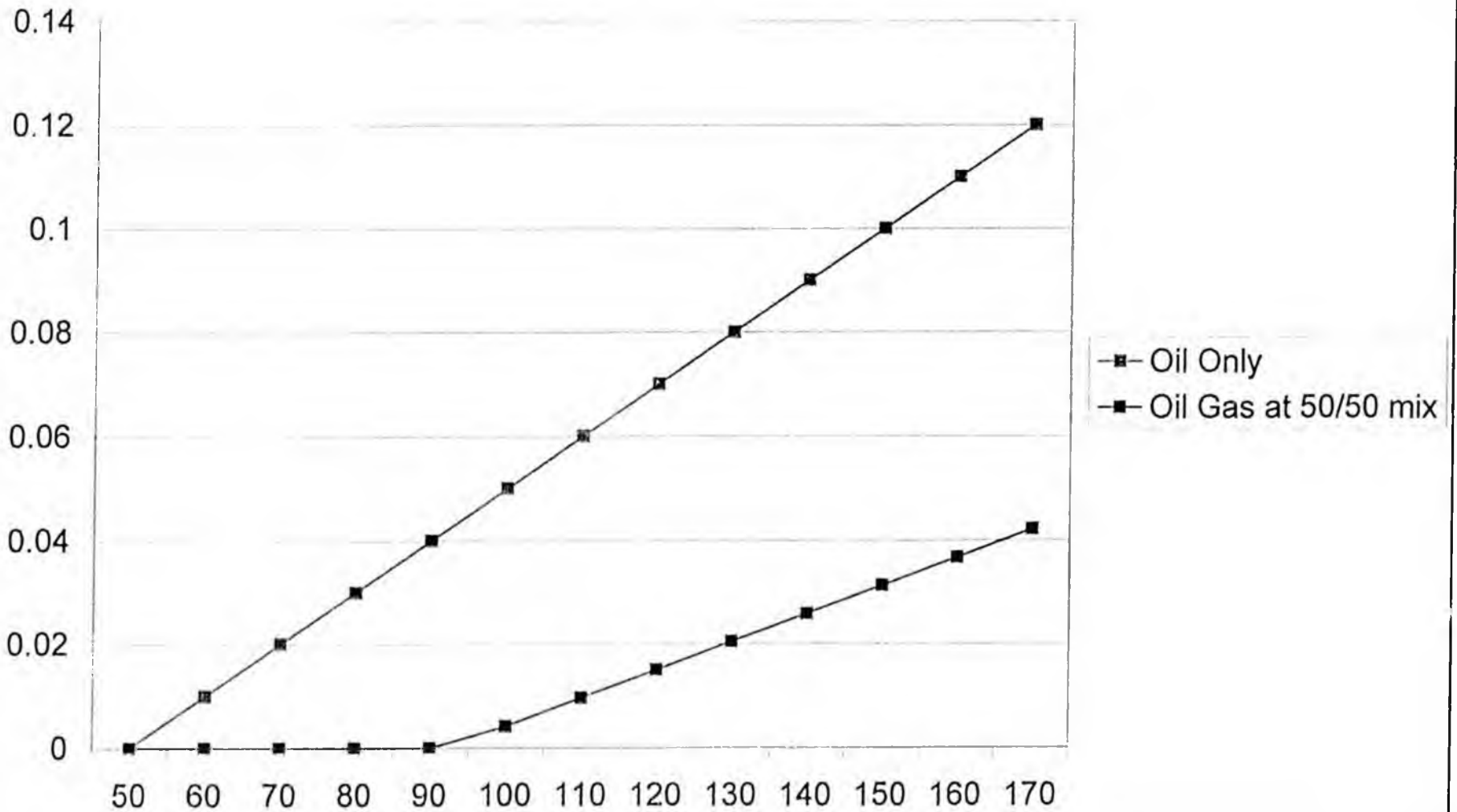
Price	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0	130.0	140.0	150.0	160.0	170.0
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	35.0	45.0	55.0	65.0	75.0	85.0	95.0	105.0	115.0	125.0	135.0	145.0	155.0
Progressivity Adjuster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



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

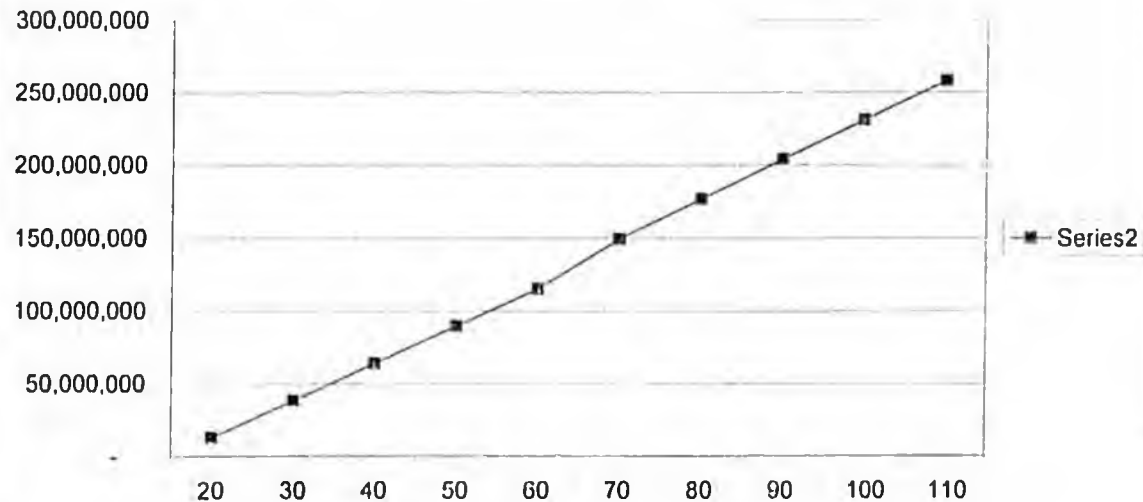
Price	50.0	60.0	70.0	80.0	90.0	100.0	110.0	120.0	130.0	140.0	150.0	160.0	170.0	180.0	190.0
Total Costs (opex, capex, downstream)	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Net or "Production Tax Value"	35.0	45.0	55.0	65.0	75.0	85.0	95.0	105.0	115.0	125.0	135.0	145.0	155.0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

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



Daily Vol	800,000	800,000	800,000	800,000	800,000	850,000	850,000	850,000	850,000	850,000
Days	365	365	365	365	365	365	365	365	365	365
Royalty	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%
base volume	255,500,000	255,500,000	255,500,000	255,500,000	255,500,000	271,468,750	271,468,750	271,468,750	271,468,750	271,468,750
Price	\$ 20.00	\$ 30.00	\$ 40.00	\$ 50.00	\$ 60.00	\$ 70.00	\$ 80.00	\$ 90.00	\$ 100.00	\$ 110.00
Costs	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)	\$ (15.00)
Net Value	\$ 5.00	\$ 15.00	\$ 25.00	\$ 35.00	\$ 45.00	\$ 55.00	\$ 65.00	\$ 75.00	\$ 85.00	\$ 95.00
Net Value	1,277,500,000	3,832,500,000	6,387,500,000	8,942,500,000	11,497,500,000	14,930,761,250	17,645,468,750	20,360,156,250	23,074,843,750	25,789,531,250
result	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
result	12,775,000	38,325,000	63,875,000	89,425,000	114,975,000	149,307,813	176,454,688	203,601,563	230,748,438	257,895,313

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



LEGAL SERVICES

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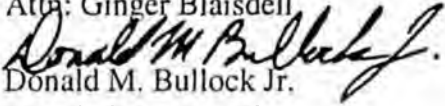
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 20, 2006

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

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

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

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

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

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

Section 30 of SB 2001 reads as follows:

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

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

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

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

Article IX, sec. 1

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

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

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

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

² 659 P.2d 1175 (Alaska 1983).

³ 659 P.2d at 1179 (footnote omitted).

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

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

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

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

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

⁴ 657 P.2d 396 (Alaska 1983).

⁵ 657 P.2d at 398.

⁶ 1998 Alas. AG LEXIS 7 (May 29, 1998).

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

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

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

Article IX, sec. 4

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

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

⁷ 21 Cal. 237 (1862).

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

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

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

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

Article I, sec. 15

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

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

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

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

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

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

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

¹⁰ 11 U.S. 164; 3 L. Ed. 303 (1812).

¹¹ 11 U.S. at 165, 3 L. Ed. at 304.

¹² 11 U.S. at 166, 3 L. Ed. 304.

¹³ 11 U.S. at 167, 3 L. Ed. 304.

¹⁴ 11 U.S. at 167, 3 L. Ed. 304.

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

Conclusions

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

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

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

DMB:lmb
06-172.lmb

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

Governor's PPT Legislation
Alaska Senate
2006 Special Session

Dan E. Dickinson CPA
May 20, 2006

Gov's PPT Legislation

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

Gov's PPT Legislation

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

Cook Inlet

Sec. 5. 43.55.011 (g)

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

Sec. 5. 43.55.011 (g)

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

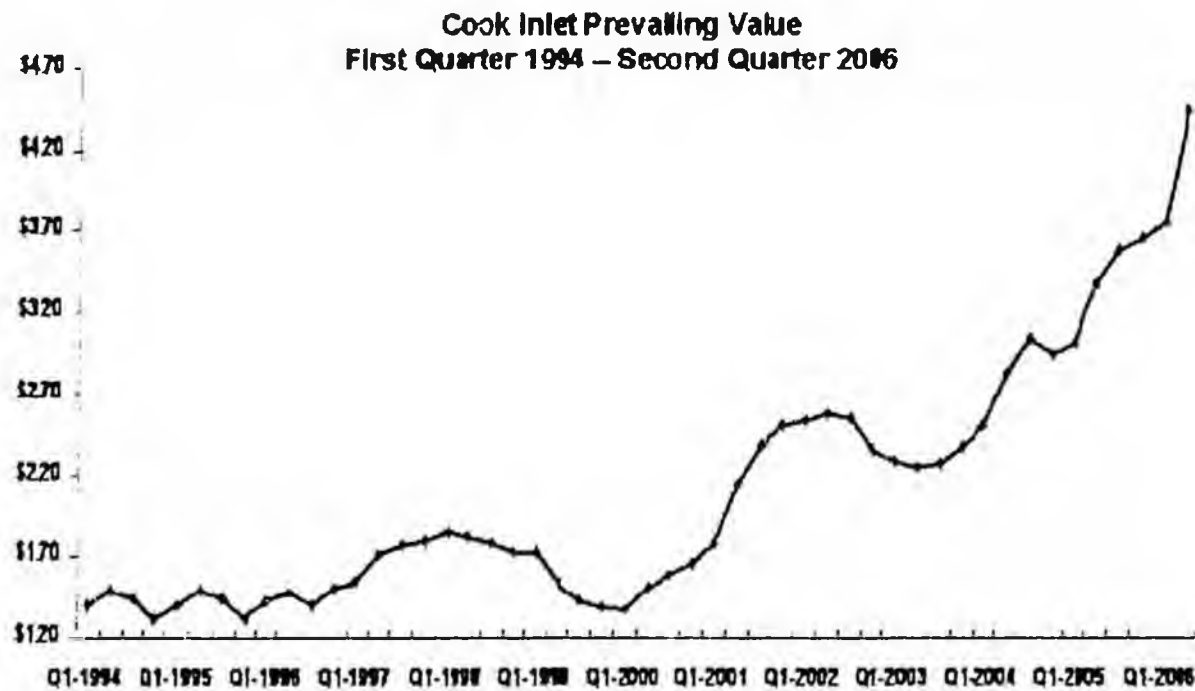
Sec. 5. 43.55.011 (g)

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

Sec. 5. 43.55.011 (g)

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

Cook Inlet Gas Prevailing Value



Source: Department of Revenue Tax Division Website

6:55:12 PM

9

Sec 25 AS 43.55.160 (a)

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

Gas Revenues

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

COMPARISON OF PPT BILL VERSIONS--HIGHLIGHTS

5/20/2006

source: DOR

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

5/20/06

7:22:22 P.1

COMPARISON OF PPT BILL VERSIONS--HIGHLIGHTS

5/20/2006

source: DOR

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

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Lynne Smith

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



PPT Update for May 22

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

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

LEGAL SERVICES

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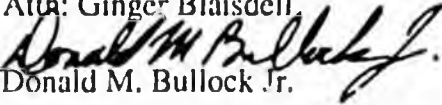
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 20, 2006

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

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

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

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

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

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

Section 30 of SB 2001 reads as follows:

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

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

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

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

Article IX, sec. 1

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

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

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

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

² 659 P.2d 1175 (Alaska 1983).

³ 659 P.2d at 1179 (footnote omitted).

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

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

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

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

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

⁴ 657 P.2d 396 (Alaska 1983).

⁵ 657 P.2d at 398.

⁶ 1998 Alas. AG LEXIS 7 (May 29, 1998).

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

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

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

Article IX, sec. 4

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

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

⁷ 21 Cal. 237 (1862).

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

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

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

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

Article I, sec. 15

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

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

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

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

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

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

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

¹⁰ 11 U.S. 164, 3 L. Ed. 303 (1812).

¹¹ 11 U.S. at 165, 3 L. Ed. at 304.

¹² 11 U.S. at 166, 3 L. Ed. 304.

¹³ 11 U.S. at 167, 3 L. Ed. 304.

¹⁴ 11 U.S. at 167, 3 L. Ed. 304.

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

Conclusions

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

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

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

DMB:lmb
06-172.lmb

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

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May 20, 2006

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

Dear President Stevens:

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

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

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

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

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

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

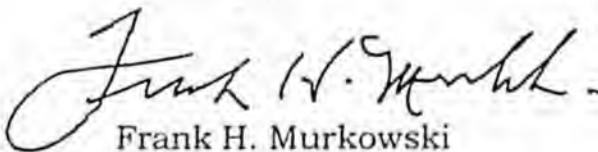
The 20 percent tax credit for qualified investments and for annual losses remain the same. The credits could not be used to reduce a taxpayer's liability below zero. A credit not used in a given period may still either be carried forward or sold to another taxpayer who might better be able to use it.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

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

The Honorable Ben Stevens
May 20, 2006
Page 3

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

Sincerely,

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

Frank H. Murkowski
Governor

Enclosure

SB

30002

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB 3002 (NGD)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Stranded Gas Development Act Amendments RDU Administration and Support
Component Commissioner's Office
Sponsor Rules Committee
Requester Governor Component No. 123

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
Bond Proceeds						
Bond Bank Investment Earnings						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 amends the Alaska Stranded Gas Development Act (AS 43.82) (SGDA) to increase the time period allowed for the Commissioner of Revenue to prepare a summary of public comments, suggest amendments to a preliminary contract and make the final fiscal interest findings and determination from 30 days to 120 days.

Funding for negotiations under the SGDA has been previously provided and no additional funding is required as a result of this legislation.

Prepared by: Jerry Burnett Phone 465-2312
Division Administrative Services Date/Time 8/9/06 12:00 AM
Approved: Steve Porter Date 8/9/2006
Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 3002
(S) Publish Date: 7/12/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Stranded Gas Development Act Amendments RDU: Administration and Support
Component: Commissioner's Office
Sponsor: Rules Committee
Requester: Governor Component No.: 123

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
Bond Proceeds						
Bond Bank Investment Earnings						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 amends the Alaska Stranded Gas Development Act (AS 43.82) (SGDA) to clarify and/or provide additional authority for the development of stranded gas fiscal contract terms relating to oil. The bill also includes provisions relating to certain payments to municipalities and nonprofit organizations and creates an impact grant fund.

Funding for negotiations under the SGDA has been previously provided and no additional funding is required as a result of this legislation.

Prepared by: Jerry Burnett Phone: 465-2312
Division: Administrative Services Date/Time: 7/12/06 12:00 AM
Approved: Steve Porter Date: 5/9/2006
Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 3002
(S) Publish Date: 7/12/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Stranded Gas Development Act Amendments RDU: Resource Development
Sponsor: Rules by Request of the Governor Component: Oil and Gas Development
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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 would amend the Alaska Stranded Gas Development Act including provisions relating to certain payments to municipalities and nonprofit organizations.

There is no anticipated cost to DNR from this bill.

Prepared by: William Van Dyke, Acting Director Phone: 269-8800
Division: Oil and Gas Date/Time: 7/12/2006
Approved by: Michael Mingo, Commissioner Date: 7/12/2006
Agency: Natural Resources