

Committee Substitute for Senate Bill 21 (RES)
28 –GS1647\C
February 28, 2013
SECTION ANALYSIS

Section 1: AS 29.60.850, relating to certain appropriations to the general fund is amended to allow the legislature to make appropriations based on taxes paid during the previous calendar year under the Alaska Net Income Tax Act, AS 43.20, to conform to the repeal of AS 43.55.011(g) in section 26 of the bill.

Section 2: Amends AS 43.20, the Alaska Net Income Tax Act, by adding a new section, AS 43.55.049, relating to the new qualified oil and gas service industry expenditure tax credit, to be effective for a tax year ending after the date of this act. A taxpayer may apply a tax credit for 10 percent of the taxpayer’s qualified oil and gas service industry expenditure incurred in the state, limited to not more \$10,000,000 in a tax year. The credit may be transferred; the transferee may apply up to \$10,000,000 of a transferred credit in a tax year, and may not apply the credit more than seven calendar years after the tax credit is claimed.

Subsection (e) provides that the Department of Revenue may publish the total amount of tax credits claimed under this section along with a description of the expenditures that were the basis of the tax credits in a year that three or more taxpayers claim a tax credit under this section.

Subsection (f) provides definitions of “manufacture”, “modification” and “qualified oil and gas service industry expenditure.”

Section 3: AS 43.55.011(e), relating to the levy of the oil and gas production tax, is amended to eliminate the reference to AS 43.55.011(g), the monthly progressivity tax, which is repealed in the bill. Beginning January 1, 2014, AS 43.55.011(e) would levy on producers of oil and gas produced each calendar year a flat rate tax of 35 percent (instead of the current 25 percent) of the production tax value of taxable oil and gas produced from each lease or property in the state. No change is made to current tax ceilings that apply to Cook Inlet oil and gas, gas produced outside the Cook Inlet basin and used in the state, and oil and gas produced from new fields outside the Cook Inlet basin and south of the North Slope.

Section 4: Amends AS 43.55.011(o), relating to gas used in the state, to clarify that the tax ceiling applicable to gas used in the state does not apply to gas subject to AS 43.55.011(p) (the seven year tax limitation of four percent of gross value at the point of production for oil and gas first produced commercially outside of the Cook Inlet basin and south of 68 degrees North latitude after December 31, 2012, and before January 1, 2022).

Section 5: Amends AS 43.55.020(a), monthly installment payments of estimated tax, to clarify payment provisions relating to the determination of tax due for oil and gas subject to AS 43.55.011(p) and makes other minor clarifying amendments.

Section 6: Amends AS 43.55.020(a), monthly installment payments of estimated tax, for oil and gas produced after January 1, 2014, to conform to the repeal of AS 43.55.011(g), to apply the new base rate of 35 percent, and to account for the gross revenue exclusion in new subsection (f), AS 43.55.160, in the bill.

Section 7: AS 43.55.020(d), related to payment by a producer to a private royalty owner, is amended to refer to the tax levied by AS 43.55.011(e) instead of AS 43.55.011(e)–(g). This amendment does not change the substance or effect of AS 43.55.020(d) although to avoid confusion, the amendment is made effective the same date as the repeal of AS 43.55.011(g).

Section 8: Amends AS 43.55.023(a) to eliminate the current restrictions on use of a tax credit for qualified capital expenditures and allow the full amount of a tax credit to be applied in a single calendar year beginning January 1, 2013 for expenditures after December 31, 2012. This amendment adds a new subsection to limit the 20 percent tax credit for qualified capital expenditures incurred north of 68 degrees North latitude (North Slope) to expenditures incurred before January 1, 2014. Tax credits under AS 43.55.023(a) based on expenditures to explore for, develop, or produce oil and gas deposits south of the North Slope are not affected.

Section 9: Amends AS 43.55.023(a) to refer to the AS 43.55.025(q), related to carried forward loss credit for exploration expenses on the North Slope.

Section 10: Amends AS 43.55.023(b) to provide that the carried-forward annual loss credit will be in the amount of 35 percent based on expenditures incurred after December 31, 2013, to explore for, develop, or produce oil and gas deposits located on the North Slope. Carried-forward annual loss tax credits in the amount of 25 percent based on expenditures incurred to explore for, develop, or produce oil or gas deposits located south of the North Slope are not affected.

Section 11: Amends AS 43.55.023(c) to conform with new subsections (p)–(u) setting out the provisions that will apply to a tax credit for carried-forward losses incurred for expenditures related to North Slope activities.

Section 12: Amends AS 43.55.023(d), issuance of transferable and redeemable tax credit certificates for qualified capital expenditures, to conform to the amendments to AS 43.55.023(a) authorizing the Department of Revenue to issue one tax credit certificate for the full amount of a transferable tax credit.

Section 13: Amends AS 43.55.023(d), issuance of transferable and redeemable tax credit certificates for qualified capital expenditures, so that tax credits certificates based on lease expenditures incurred after December 31, 2013 to explore for, develop, or produce oil and gas deposits on the North Slope are no longer redeemable for cash; nor are the tax credits transferable except in limited circumstances. The reference to AS 43.55.023(i), the transitional expenditure credit, is deleted to conform to the repeal of AS 43.55.023(i). Tax credits based on lease expenditures to explore for, develop, or produce oil and gas deposits south of the North Slope are still transferable and redeemable for cash from the oil and gas tax credit fund.

Section 14: Amends AS 43.55.023(g), issuance of tax credit certificates, to conform to the repeal of AS 43.55.023(m).

Section 15: Amends AS 43.55.023(n), issuance of tax credit certificates, to conform to the repeal of AS 43.55.023(m).

Section 16: Amends AS 43.55.023 by adding new subsections (p)–(u), effective January 1, 2014 relating to tax credits for carried-forward annual losses based on adjusted lease expenditures incurred to explore for, develop, or produce oil or gas deposits located on the North Slope.

Subsection (p) limits application of a North Slope carried-forward loss credit to tax liability two or more calendar years after the expenditures on which the credit is based were incurred, but the credit may not be applied later than 10 years after the expenditures were incurred.

Subsection (q) establishes a “first earned, first used” rule by requiring that available North Slope carried-forward loss tax credits must be applied in order of the year the expenditures were incurred, with the earliest year first, against tax liability under AS 43.55.011(e).

Subsection (r) provides an annual 15 percent increase in the amount of a North Slope carried-forward loss tax credit subject to compliance with subsections (p), (q) and (s). An amount of a tax credit subject to this subsection begins to increase on January 1 of the second calendar year immediately following the year the expenditures on which the credit is based were incurred, unless that second calendar year is the year for which the credit is applied. The credit stops increasing on December 31 of the year preceding the year against which the credit is applied against the person’s tax liability. The increase under this subsection has no value except as applied against a person’s tax liability, and the credit expires if not used within the 10 year period in AS 43.55.023(p) of this section.

Subsection (s) provides that a tax credit will not increase under section (r) if the credit could have been applied to a producer's tax liability and provides the order in which credits must be applied and calculations for the determination of when a tax credit could be applied against a person's tax liability.

Subsection (t) provides that a North Slope carried-forward loss tax credit is not transferable except to another person that acquires an interest in the lease or property owned by the transferee at the time the lease expenditures on which the credit is based were incurred. A transferee's use of the credit is subject to the provisions of (u) of this section, and includes filing information on the transfer with the Department of Revenue. The transferee's use of the credit against its tax liability is subject to audit by the Department of Revenue to the same extent as a tax credit that has not been transferred.

Subsection (u) sets out limitations for use of a North Slope carried-forward loss tax credit where a tax credit is used by a producer to whom a tax credit has been transferred through acquisition of leases or properties, or by a producer that has acquired the person that holds the tax credit. The transferee or successor may use the amount of the tax credit specified in this subsection, but the amount of the credit that may be applied against the transferee's or successor's tax liability under AS 43.55.011(e) for a calendar year may not exceed 20 percent of the sum obtained by an equation based on the taxable gross value at the point of production from the lease or property in a calendar year multiplied by the percentage interest in the lease or property owned by the person that incurred the expenditures on which the tax credit is based.

Section 17: Amends AS 43.55.024(d) to extend for 6 years the time that a producer may take a tax credit under AS 43.55.024(c), the small producer credit. Qualifying producers would have until 2022 (instead of 2016) to take the nontransferable small producer tax credit.

Section 18: Amends AS 43.55.024(e) to reference only subsections (a) (the new area credit) and (c) (the small producer credit) to conform to the new credit in section 19.

Section 19: Amends AS 43.55.024 to add a new provision for a non-transferable tax credit of \$5 for each barrel of oil taxable under AS 43.55.011(e) produced in a calendar year. This section applies to oil produced after December 31, 2013.

Section 20: Amends AS 43.55.025 (b), the alternate tax credit for oil and gas exploration, to extend the current sunset date from July 1, 2016 to July 1, 2022.

Section 21: Amends AS 43.55.025(c), production tax credits of 30 percent for an exploration well, to remove the requirement that an exploration well must be no less than three miles away from a preexisting well in order to receive credit.

Section 22: Amends AS 43.55.025 to add a new subsection (q) to provide that an expenditure for an exploration well on the North Slope incurred after December 31, 2013 that is the basis for a credit under AS 43.55.025 may not also be the basis for a credit claimed under AS 43.55.023 or another provision of AS 43.55.025.

Section 23: Amends AS 43.55.028(e) to conform to the repeal of AS 43.55.023(m) in section 32 of the bill.

Section 24: Amends AS 43.55.028(g) to conform to the repeal of AS 43.55.023(m) in section 32 of the bill.

Section 25: Amends AS 43.55.030(e) (1), annual statements of qualified capital expenditures, to clarify current practice that both explorers and producers must file statements reporting qualified capital expenditures and other information required under AS 43.55.030(e).

Section 26: Amends AS 43.55.030 by adding new subsection (g) which requires an explorer or producer claiming a North Slope loss tax credit subject to AS 43.55.023(p)–(u) to file an annual statement with the Department of Revenue reporting the nature and amount of the expenditures on which the North Slope carried-forward loss credit is based, the amount the person intends to carry forward, any increase in the amount of the credit, and other information required by the Department of Revenue.

Section 27: Amends AS 43.55.160(a), calculation of annual production tax values, to clarify and conform to the provisions of AS 43.55.011(p).

Section 28: AS 43.55.160(a), calculation of annual production tax values, is repealed and reenacted to conform to the repeal of the monthly progressivity tax in bill section 33. For oil and gas produced after January 1, 2014, a producer of oil and gas will no longer need to calculate monthly production tax values for oil and for purposes of AS 43.55.011(g), the progressivity tax. Other clarifying amendments are made setting out the categories for which a separate annual production tax value must be calculated, but the method of calculating annual production tax value is not affected.

Section 29: Amends AS 43.55.160(e) to conform to the amendments related to amendments to AS 43.55.160(a), calculation of annual production tax values.

Section 30: Amends AS 43.55.160 by adding new subsection (f) which provides that in calculating the annual production tax value for oil and gas produced north of 68 degrees North latitude the gross value at the point of production of the oil or gas meeting one or more of the following criteria is reduced by 30 percent if (1) produced from a lease or property that does not contain a lease that was within a unit on January 1, 2003; (2) produced from a participating area established after December 31, 2011, that is within a

unit formed under AS 38.05.180(p) before January 1, 2003, if the participating area does not contain a reservoir that had previously been in a participating area established before January 1, 2012, or (3) the oil or gas is produced from an acreage that was not in a participating area before December 31, 2011, but was added to an existing participating area by the Department of Natural Resources and the producer demonstrates to the Department of Revenue the volumes of oil and gas produced from the expanded participating area. A reduction in gross value at the point of production may not reduce the production tax value below zero.

Section 31: Amends AS 43.98 to establish an Oil and Gas Competitiveness Review Board in the Department of Revenue. The board includes designated commissioners and members of the public appointed by the Governor. The Board meets four times a year to evaluate and suggest changes, identify factors, and other matters related to oil and gas exploration, development and production in the state. The Board reports recommendations to the Legislature annually on suggested changes to the state's regulatory environment, fiscal regime, and alternate means for attracting and maintaining investment and development in oil and gas resources. These provisions establishing the Board are repealed as of December 31, 2022.

Section 32: Repeals AS 43.55.023(m) relating to tax credit certificates issued for expenditures based on activities south of 68 degrees North latitude.

Section 33: Repeals AS 43.55.011(g), 43.55.023(i) and 43.55.160(c).

Section 34: Repeals provisions related to Oil and Gas Competitiveness Review Board as of December 31, 2022.

Section 35: Applicability sections for sections that apply to oil and gas produced after a certain date and for expenditures incurred after a certain date.

Section 36: Transition provisions related to terms of members of the Oil and Gas Competitiveness Review Board.

Section 37: Transition provision providing the Department of Revenue's authority to adopt regulations, to be effective not before the date of the effective date of the provisions of this bill.

Section 38: Provisions related to retroactive application of certain sections.

Section 39: Sets out provisions effective January 1, 2014.

Section 40: Except as provided in section 30, the remaining sections of the bill will take effect immediately under AS 01.10.070(c).