

CS FOR HOUSE BILL NO. 289(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/2/12
Referred: Rules

Sponsor(s): REPRESENTATIVES THOMPSON, Tammie Wilson, Feige, Dick, Neuman, Kawasaki, Miller, Guttenberg, Gara, Johnson, Hawker, Lynn

SENATORS McGuire, Dyson, Giessel, Huggins, Menard, Wagoner

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a liquefied natural gas storage facility; relating to the tax credit for**
2 **an investment in a liquefied natural gas storage facility; relating to the regulation of**
3 **liquefied natural gas storage as a utility; relating to the powers and duties of the director**
4 **of the division of lands and to lease fees for a liquefied natural gas storage facility on**
5 **state land; and providing for an effective date."**

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

7 *** Section 1.** AS 38.05 is amended by adding a new section to read:

8 **Sec. 38.05.096. Exemption from rental payments on land leased for certain**
9 **liquefied natural gas storage facilities.** (a) A person leasing state land for a liquefied
10 natural gas storage facility other than a gas storage facility subject to AS 38.05.180(u)
11 may request an exemption from lease payments as provided in this section. The
12 exemption is applicable for the periods described in (b) of this section.

13 (b) The exemption is available for the calendar year in which the liquefied

1 natural gas storage facility commences commercial operation and for each of the nine
 2 calendar years immediately following the first year of commercial operation.
 3 However, an exemption is not applicable for the calendar year after the facility ceases
 4 commercial operation or for any subsequent calendar year.

5 (c) The lessee shall provide the director with any information the director
 6 requests to determine whether the lessee qualifies for the exemption.

7 (d) Information related to state land leased for a liquefied natural gas storage
 8 facility qualifying for the exemption in this section is public information and may be
 9 furnished to the Regulatory Commission of Alaska. On request, the director shall
 10 provide the name of each person using state land leased for a liquefied natural gas
 11 storage facility, the years for which an exemption was granted, and the amount of the
 12 exemption.

13 (e) A person receiving an exemption for a payment under this section that
 14 contracts to store liquefied natural gas for a utility regulated under AS 42.05 shall
 15 reduce the storage price to reflect the value of the exemption.

16 (f) In this section,

17 (1) "ceases commercial operation" and "commences commercial
 18 operation" have the meanings given in AS 31.05.032;

19 (2) "liquefied natural gas storage facility" has the meaning given in
 20 AS 42.05.990.

21 * **Sec. 2.** AS 42.05.381(k) is amended to read:

22 (k) The cost to the utility of storing gas in a gas storage facility **or storing**
 23 **liquefied natural gas in a liquefied natural gas storage facility** that is allowed in
 24 determining a just and reasonable rate shall reflect the reduction in cost attributable to
 25 any exemption from a payment due under **AS 38.05.096 or 38.05.180(u), as**
 26 **applicable**, [AS 38.05.180(u)] and the value of a tax credit that the owner of the gas
 27 storage facility received under AS 43.20.046 **or 43.20.047, as applicable**. The
 28 commission may request the (1) commissioner of natural resources to report the value
 29 of the exemption from a payment due under **AS 38.05.096 or 38.05.180(u), as**
 30 **applicable**, [AS 38.05.180(u)] that the gas storage facility received; and (2)
 31 commissioner of revenue to report information on the amount of tax credits claimed

1 under AS 43.20.046 **and 43.20.047, as applicable,** for the gas storage facility **or**
 2 **liquefied natural gas storage facility.** In this subsection,

3 (1) "gas storage facility" has the meaning given in AS 31.05.032;

4 (2) **"liquefied natural gas storage facility" has the meaning given**
 5 **in AS 42.05.990.**

6 * **Sec. 3.** AS 42.05.990(5) is amended to read:

7 (5) "public utility" or "utility" includes every corporation whether
 8 public, cooperative, or otherwise, company, individual, or association of individuals,
 9 their lessees, trustees, or receivers appointed by a court, that owns, operates, manages,
 10 or controls any plant, pipeline, or system for

11 (A) furnishing, by generation, transmission, or distribution,
 12 electrical service to the public for compensation;

13 (B) furnishing telecommunications service to the public for
 14 compensation;

15 (C) furnishing water, steam, or sewer service to the public for
 16 compensation;

17 (D) furnishing by transmission or distribution of natural or
 18 manufactured gas to the public for compensation;

19 (E) furnishing for distribution or by distribution petroleum or
 20 petroleum products to the public for compensation when the consumer has no
 21 alternative in the choice of supplier of a comparable product and service at an
 22 equal or lesser price;

23 (F) furnishing collection and disposal service of garbage,
 24 refuse, trash, or other waste material to the public for compensation;

25 (G) furnishing the service of natural gas storage to the public
 26 for compensation;

27 **(H) furnishing the service of liquefied natural gas storage to**
 28 **the public for compensation;**

29 * **Sec. 4.** AS 42.05.990 is amended by adding new paragraphs to read:

30 (11) "liquefied natural gas storage facility" means a facility that
 31 receives natural gas volumes in a liquid or gaseous state from customers, holds the gas

1 volumes in a liquid state in a reservoir, and delivers the gas volumes in a liquid or
2 gaseous state to the customer; in this paragraph, "facility" includes

3 (A) all parts of the facility from the point at which the natural
4 gas volumes are received by the facility from the customer to the point at
5 which the natural gas volumes are delivered by the facility to the customer;

6 (B) a facility consisting of a reservoir, either underground or
7 aboveground, and one or more of the following components of the facility:

8 (i) pipe;

9 (ii) compressor stations;

10 (iii) station equipment;

11 (iv) liquefaction plant or facility;

12 (v) gasification plant or facility;

13 (vi) on-site or remote monitoring, supervision, and
14 control facilities;

15 (vii) gas processing plants and gas treatment plants, but
16 not including a manufacturing plant or facility;

17 (viii) other equipment necessary to receive, place into
18 the reservoir, monitor, remove from the reservoir, process, and deliver
19 natural gas;

20 (12) "reservoir" means a receptacle or chamber, either natural or man-
21 made, holding a gas or liquid, and includes a tank or a depleted or nearly depleted
22 pool;

23 (13) "service of liquefied natural gas storage" means the operation of a
24 liquefied natural gas storage facility; "service of liquefied natural gas storage" does
25 not include the storage of liquefied natural gas

26 (A) owned by or contractually obligated to the owner, operator,
27 or manager of the liquefied natural gas storage facility;

28 (B) that is incidental to the production or sale of natural gas to
29 one or more third-party customers; or

30 (C) for which the price of storage is not separately itemized.

31 * **Sec. 5.** AS 43.20 is amended by adding a new section to article 1 to read:

1 **Sec. 43.20.047. Liquefied natural gas storage facility tax credit.** (a) A
 2 person that is an owner of a liquefied natural gas storage facility described in (b) of
 3 this section that commences commercial operation before January 1, 2020, may apply
 4 a refundable credit against a tax liability that may be imposed on the person under this
 5 chapter or receive the amount of the credit in the form of a payment for the taxable
 6 year in which the liquefied natural gas storage facility commences commercial
 7 operation. The tax credit or payment under this section may not exceed the lesser of
 8 \$15,000,000 or 50 percent of the costs incurred to establish or expand the liquefied
 9 natural gas storage facility. The tax credit in this section is in addition to any other
 10 credit under this chapter for which the person is eligible.

11 (b) To qualify for the credit in this section, a liquefied natural gas storage
 12 facility

13 (1) must have a liquefied natural gas storage volume of not less than
 14 25,000 gallons of liquefied natural gas, or, if the credit is claimed for an expansion, the
 15 expansion must have increased the capacity of an existing liquefied natural gas storage
 16 facility by more than 25,000 gallons;

17 (2) may not have been in operation as a liquefied natural gas storage
 18 facility before January 1, 2011, unless the tax credit in this section is based on the
 19 expansion of the liquefied natural gas storage facility after December 31, 2011;

20 (3) must be regulated under AS 42.05 as a utility and be available to
 21 furnish the service of liquefied natural gas storage to customers, utilities, or industrial
 22 facilities; in this paragraph, "service of liquefied natural gas storage" has the meaning
 23 given in AS 42.05.990;

24 (4) if located on state land and leased or subject to a lease under
 25 AS 38.05, must be in compliance with the terms of the lease; and

26 (5) must have commenced commercial operation on or before the date
 27 the person takes a credit under (a) of this section or applies for a payment under (a) of
 28 this section.

29 (c) To claim the credit or request a payment, a person shall submit to the
 30 department a certification of the capacity of the liquefied natural gas storage facility
 31 measured in gallons or the capacity of an expansion to an existing liquefied natural gas

1 storage facility measured in gallons, the date that the liquefied natural gas storage
2 facility commenced commercial operation, the date that any expansion to the liquefied
3 natural gas storage facility commenced commercial operation, and other information
4 required by the department.

5 (d) A person applying the credit under this section against a liability under this
6 chapter shall claim the credit on the person's return. A person entitled to a tax credit
7 under this section that is greater than the person's tax liability under this chapter may
8 request a refund or payment in the amount of the unused portion of the tax credit.

9 (e) The department may use money available in the oil and gas tax credit fund
10 established in AS 43.55.028 to make a refund or payment under (d) of this section in
11 whole or in part if the department finds that (1) the claimant does not have an
12 outstanding liability to the state for unpaid delinquent taxes under this title; and (2)
13 after application of all available tax credits, the claimant's total tax liability under this
14 chapter for the calendar year in which the claim is made is zero. In this subsection,
15 "unpaid delinquent tax" means an amount of tax for which the department has issued
16 an assessment that has not been paid and, if contested, has not been finally resolved in
17 the taxpayer's favor.

18 (f) For the purpose of determining the amount of the credit under this section,
19 the costs incurred to establish a liquefied natural gas storage facility or to expand a
20 liquefied natural gas storage facility shall be submitted to the department with
21 verification by an independent certified public accountant, licensed in the state. The
22 volume of working liquefied natural gas storage or volume of the expansion to an
23 existing liquefied natural gas storage facility shall be verified by a professional
24 engineer licensed in the state with relevant experience.

25 (g) A person may not receive a credit under this section for the acquisition of a
26 liquefied natural gas storage facility for which a credit has been taken under this
27 section.

28 (h) If the liquefied natural gas storage facility for which a credit was received
29 under this section ceases commercial operation during the nine calendar years
30 immediately following the calendar year in which the liquefied natural gas storage
31 facility commences commercial operation, the tax liability under this chapter of the

1 person who claimed the credit shall be increased, and a person not subject to the tax
2 under this chapter that received a payment under (d) and (e) of this section shall be
3 liable to the state in the amount determined in this subsection. The amount of the
4 increase in tax liability or liability to the state

5 (1) for a person subject to the tax under this chapter, shall be
6 determined and assessed for the taxable year in which the liquefied natural gas storage
7 facility ceases commercial operation, regardless of whether the liquefied natural gas
8 storage facility subsequently resumes commercial operation;

9 (2) for a person not subject to the tax due under this chapter, shall be
10 determined and assessed as of December 31 of the calendar year in which the liquefied
11 natural gas storage facility ceases commercial operation, regardless of whether the
12 liquefied natural gas storage facility subsequently resumes commercial operation; and

13 (3) is equal to the total amount of the credit taken or received as a
14 payment under (d) of this section, as applicable, multiplied by a fraction, the
15 numerator of which is the difference between 10 and the number of calendar years for
16 which the liquefied natural gas storage facility was eligible for a tax credit under this
17 section and the denominator of which is 10.

18 (i) The issuance of a refund under this section does not limit the department's
19 ability to later audit or adjust the claim if the department determines, as a result of the
20 audit, that the person that claimed the credit was not entitled to the amount of the
21 credit. The tax liability of the person receiving the credit under this chapter is
22 increased by the amount of the credit that exceeds that to which the person was
23 entitled. If the tax liability is increased under this subsection, the increase bears
24 interest at the rate set by AS 43.05.225 from the date the refund was issued.

25 (j) A person claiming a tax credit under this section for a liquefied natural gas
26 storage facility that ceases commercial operation within nine calendar years
27 immediately following the calendar year in which the liquefied natural gas storage
28 facility commences commercial operation shall notify the department in writing of the
29 date the liquefied natural gas storage facility ceased commercial operation. The notice
30 must be filed with the return for the taxable year in which the liquefied natural gas
31 storage facility ceases commercial operation.

1 (k) A refund under this section does not bear interest.

2 (l) In this section,

3 (1) "ceases commercial operation" means that the liquefied natural gas
4 storage facility fails to add or withdraw 20 percent or more of its working capacity of
5 liquefied natural gas during a calendar year after the calendar year in which the
6 liquefied natural gas storage facility commences commercial operation;

7 (2) "commences commercial operation" means the first input of
8 liquefied natural gas into a liquefied natural gas storage facility for purposes other than
9 testing;

10 (3) "liquefied natural gas storage facility" has the meaning given in
11 AS 42.05.990.

12 * **Sec. 6.** AS 43.55.028(a) is amended to read:

13 (a) The oil and gas tax credit fund is established as a separate fund of the state.
14 The purpose of the fund is to purchase transferable tax credit certificates issued under
15 AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to
16 pay refunds **and payments** claimed under AS 43.20.046 **or 43.20.047**.

17 * **Sec. 7.** AS 43.55.028(g) is amended to read:

18 (g) The department may adopt regulations to carry out the purposes of this
19 section, including standards and procedures to allocate available money among
20 applications for purchases under this chapter and claims for refunds **and payments**
21 under AS 43.20.046 **or 43.20.047** when the total amount of the applications for
22 purchase and claims for refund exceed the amount of available money in the fund. The
23 regulations adopted by the department may not, when allocating available money in
24 the fund under this section, distinguish an application for the purchase of a credit
25 certificate issued under AS 43.55.023(m) or a claim for refund under AS 43.20.046 **or**
26 **AS 43.20.047**.

27 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).