

Alaska Oil and Gas Association



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TESTIMONY BY THE
ALASKA OIL AND GAS ASSOCIATION
TO THE SENATE JUDICIARY COMMITTEE
REGARDING SB 2001 & CSSB 2001(RES)
ON THE TOPIC OF “CREDIT BUY-BACK FUND &
APPROPRIATION AUTHORITY”

October 30, 2007

Mr. Chairman and Members of the Committee:

For the record, my name is Thomas K. Williams. I am Senior Royalty & Tax Counsel for BP Exploration (Alaska) Inc. and a former tax administrator for the State of Alaska. I appear before you today to testify in my role as chair of the AOGA Tax Committee.

My present testimony pertains to the topic of “Credit buy-back fund & appropriation authority” as scheduled for consideration today.

As introduced, Section 45 of SB 2001 would enact a new statute, AS 43.55.028, establishing an “Oil and Gas Tax Credit Fund” to purchase tax credits from explorers and others trying to sell their tax credits issued under AS 43.55.023 or AS 43.55.025 and not being offered full face value for them, and authorizing DOR to use this fund to purchase such tax credits. At the same time, Section 63 of SB 2001 as introduced would repeal AS 43.55.023(f), which allows the Department of Revenue (“DOR”) to acquire tax-credit certificates by making a cash refund to a person tendering such a certificate. This repeal would include paragraph (f)(4), limiting to \$25 million a year the amount of such refunds that DOR may make to acquire tax-credit certificates. The repeal of this cap would be effective January 1, 2008 under Section 72 of the original Bill, as would the creation of the Fund.

The Fund would consist of money appropriated to it, plus “earnings on the fund.” AS 43.55.028(b). The recommended annual appropriation to the Fund under § 028(c) would be 10% of the taxes collected by the state under AS 43.55.011 during a fiscal year if DOR’s forecast for the average ANS West Coast spot price for that fiscal year is \$60 a barrel or higher, and otherwise 15 percent of those taxes. But the actual appropriation, if any, for any given fiscal year would only be whatever the Legislature authorizes and the governor allows after making any reduction to the appropriation through the line-item veto power.

AOGA supports the concepts of the State buying back tax-credit certificates and of creating the Fund to do so. However, for this system to work, it will be essential that future Legislatures actually appropriate the necessary money into the Fund each year. Otherwise the Fund will turn into an empty promise for future investors.

Inasmuch as the topic currently under consideration includes “appropriation authority” for credit buy-backs, AOGA would draw the Committee’s attention to a few potential issues relating to this portion of the topic:

1. Might the automatic inclusion of “earnings on the fund” as part of the Fund, without specific appropriations of those earnings back into the Fund each year, violate Alaska’s constitutional prohibition against dedicated revenues?¹ If so, what might the legal effect be of AS 43.55.028(h), stating that “[n]othing in this section [*i.e.*, AS 43.55.028] creates a dedicated fund”?
2. Might the anti-lapse provision in AS 43.55.028(f) — which states that “[m]oney in the fund at the end of a fiscal year [including money appropriated to it] does not lapse and remains available for expenditure in successive fiscal years[,]”— belong more properly in a bill making an appropriation to the Fund, or a bill specifically reappropriating the remaining money back into the Fund, rather than the legislation establishing the Fund in the first place? If so, would AS 43.55.028(f) violate the Alaska Constitution’s “one subject” rule for legislation?²

Although representatives of some members of the AOGA Tax Committee may be attorneys, the Tax Committee is not authorized or qualified to offer your Committee any legal advice or opinion about what the answers to these questions might or might not be. The most we feel we can properly do under the circumstances is to point these potential issues out to you, so you can get whatever professional legal advice may be necessary or appropriate to answer these questions and to revise, if necessary or prudent, these provisions of the Bill accordingly.

As I close, Mr. Chairman, I should mention that AOGA has prepared a “white paper” on aspects of tax credits under the proposed Bill that fall outside the specific scope of the present topic. In fact, that white paper covers the following topics; 50% limitation on credit taken in first year for capital investments, “TIE” credits, electric rate-payer benefits from selling tax credits, and conditioning exploration tax-credits on new requirements to share information. We believe that Committee Members might find some or all of those points to be of interest. With your permission, I could either pass copies of this “white paper” out to Members of the Committee now, or copies could be distributed to them at the next recess or at the end of today’s hearing.

Thank you for giving AOGA this opportunity to testify.

¹ Art. IX, § 7, Alaska Constitution states: “The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [creating the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.”

² Art. II, § 13, Alaska Constitution states in pertinent part: “Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations.”