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*Practice Groups:*  
*Energy; Oil & Gas*

## Alaska Passes Legislation to Support Energy Industry Projects

*By Louisiana W. Cutler*

The 2013 Alaska Legislature passed three significant pieces of legislation and appropriated hundreds of millions of dollars for projects that will support the energy industry before it adjourned in April, with a Republican Governor and Republican-controlled Legislature aligned on the need for pro-industry oil and gas tax changes and further encouragement of State-sponsored projects to meet in-State energy needs considered.

### Tax Change – SB 21

Senate Bill 21 [\[link\]](#), introduced by Governor Parnell, cut production taxes by an estimated five billion dollars through 2019 based on \$109-\$118 barrel oil. Alaska's current production tax (ACES) has a base tax rate of 25% which progressively increases when oil is more than \$30 per barrel (0.4% per \$1 above \$30 net and 0.1% per \$1 above \$92.50 net). Critics of "progressivity" argue that because prices have been high since ACES became effective in 2006, producers have shifted investment dollars that would have normally flowed to Alaska to other jurisdictions with lower tax rates. ACES' supporters argue that production decline rates have actually slowed since 2006 due to ACES tax credits and other incentives provided for in-fill drilling and other production enhancement techniques and that only minor adjustments to progressivity were necessary or desirable.

Ultimately, the views of ACES' critics prevailed. The Legislature abandoned progressivity in favor of a 35% flat tax on production beginning in 2014. Additionally, the maximum tax rate was reduced from 75% under ACES to 35% under SB 21. The Legislature also tinkered with credits and deductions. For example, per barrel credits of up to \$8 per barrel are allowed depending on the per barrel oil price. Other incentives include continuation of a small producer credit up to \$12 million through 2016, monetization of Net Operating Losses for North Slope operations up to 45% through 2015 and 35% thereafter, and a gross revenue exclusion for barrels produced from new Units, Participating Areas or Participating Area expansions of 20% for those areas that pay 12.5% royalty and 30% for those areas that pay higher royalties.

SB 21 also includes provisions that impact other oil and gas taxes. For example, the bill reduces interest owed on all delinquent taxes (including production, income and property taxes paid by the oil and gas industry) and, therefore, correspondingly results in a reduction of interest paid to a taxpayer on any overpayments. Finally, SB 21 added a qualified oil and gas service industry expenditure credit to the oil and gas corporate income tax of up to ten million dollars for an expenditure in Alaska to manufacture or modify personal property used to explore, develop or produce oil or gas.

Although the Governor will sign SB 21, its future is uncertain. Within a week of its passage, a citizens' referendum to repeal the legislation was filed with the Lieutenant Governor. The sponsors have until July 13th to collect 30,169 signatures from Alaskan residents in at least three-fourths of the House districts of the State. If it meets all referendum requirements and survives any court challenges, the referendum will be considered by voters at the next statewide election, the August 2014 primary.

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### Large Infrastructure Projects to Meet In-State Energy Needs – HB 4 and SB 23

Alaska's government has been trying to get the vast North Slope gas resources to market since the late 1970s. The gas currently remains stranded because of the large costs of building the necessary pipeline infrastructure, and because of competition with other projects in the Lower 48 and around the world to meet global energy needs. The government, the Alaska Gasline Inducement Act (AGIA) license holder, TransCanada, and its partners, the North Slope producers (Exxon, BP and ConocoPhillips), continue to progress plans to build the AGIA pipeline to get the gas to market in Alaska and to export large quantities of LNG to Asia or other markets. Under AGIA, the State committed \$500 million to this project. At the same time, however, the Governor and Legislature continue to provide financial and other support to large infrastructure projects that would get the gas to market inside Alaska before the AGIA pipeline is expected to come on line in the early 2020s. Although Alaska is rich in oil and gas resources, its citizens have some of the highest heating fuel and gasoline prices in the Nation.

This Session, the Legislature committed \$355 million for design and planning of an in-State line known as the Bullet Line or ASAP (Alaska's Stand Alone Pipeline). This large commitment was in addition to \$72 million appropriated in previous years. The Legislature also passed HB 4 [\[link\]](#) to provide the framework for the Alaska Gasline Development Corporation (AGDC) to construct ASAP with cash and revenue bond financing. ASAP would transport gas to Interior and Southcentral Alaskan communities where most of Alaska's sparse population resides. It is also possible that AGDC will construct a spur line to export LNG from Nikiski, Alaska to Asian markets as the pipeline is designed to hold more gas than needed to fulfill in-State needs.

HB 4 was controversial in that it exempts ASAP from tariff review, procurement, transparency, court review and other statutory requirements that would have otherwise applied. AGDC argued successfully that it will engage in competitive bidding and other processes to provide transparency and that court review will still be available, albeit on faster schedules than would have been possible without the exemptions.

HB 4 was also controversial because critics felt it would be redundant to the AGIA pipeline and might even slow progress on the much bigger AGIA pipeline. However, proponents of ASAP successfully argued that if the larger pipeline project ever comes to fruition, ASAP can fold into it seamlessly but in the meantime, provide a secure source of energy to Alaskans on a faster timeline. Critics remain skeptical, arguing that the smaller pipe will be much more costly and, therefore, will not be a cost-effective alternative for Alaskans currently dependent on other sources of fuel. In an effort to lower consumer costs, HB 4 waives property taxes during pipeline construction, and requires that state and local resources like water, sand and gravel be made available at usual rates, but not rolled into the costs Alaskans would pay for. Currently, AGDC plans an open season in 2014 with the aim of securing long-term shipping contracts to support revenue bond financing for ASAP. It hopes to start construction in 2016, and to deliver gas in 2019.

SB 23 [\[link\]](#) is similarly aimed at getting natural gas from the North Slope to Alaskan residents by continuing the efforts of the State's Alaska Industrial Development and Export Authority (AIDEA) to consider whether to provide financing for the development, construction and installation of a liquefaction plant on the North Slope and a natural gas distribution system to Interior Alaska. The Legislature committed \$332.5 million to the project, which would truck LNG to Fairbanks for storage and re-gasification. Natural gas and propane would be available to consumers, utilities and

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businesses in Fairbanks and also perhaps marketed in rural Alaskan Interior communities as well and/or industrial users on the North Slope.

AIDEA would have an equity stake in the project but also seeks private sector financing for future expansion of the project. AIDEA would finance its participation through a combination of cash, Sustainable Energy Supply Development Fund appropriations, and bond financing.

AIDEA also argued that this project is not duplicative of the ASAP or AGIA pipeline projects because the North Slope liquefaction plant could eventually become part of any larger project by moving the plant elsewhere, or continuing to use it to manufacture LNG (or propane) for North Slope and rural users.

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### Authors:

#### Louisiana W. Cutler

[louisiana.cutler@klgates.com](mailto:louisiana.cutler@klgates.com)

+1.907.777.7630

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