SENATE CS FOR CS FOR HOUSE BILL NO. 207(FIN) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/16/95
Offered: 5/11/95

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

A BILL

FOR AN ACT ENTITLED

"An Act relating to adjustments to royalty reserved to the state to encourage otherwise uneconomic production of oil and gas; and providing for an effective date."

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

* Section 1. AS 36.30.850(b) is amended by adding a new paragraph to read:

(33) contracts between the Department of Natural Resources and contractors qualified to evaluate hydrocarbon development, production, transportation, and economics, to assist the commissioner of natural resources in evaluating applications for oil and gas royalty increases or decreases or other oil and gas royalty adjustments, and evaluating the related financial and technical data, entered into under AS 38.05.180(j).

* Sec. 2. AS 38.05.180(j) is amended to read:

(j) The [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR
GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE] 

commissioner 

(1) may provide for an increase or decrease or otherwise modify 
[shall adopt regulations to allow reduction of] royalty, to allow 
for production that would not otherwise be economically feasible, on individual 
leases, leases unitized as described in (p) of this section, leases subject to an 
agreement described in (s) or (t) of this section, or interests unitized under 
As 31.05; the commissioner may act under this subsection to modify the royalty 

(A) after the effective date of this Act and not later than 
July 1, 2015, so long as the authority to modify royalty under this 
subsection has been authorized or reauthorized by law within the ten 
years preceding the commissioner’s action to modify the royalty, to allow for 
production from an oil or gas field or pool if 

(i) the oil or gas field or pool has been delineated 
sufficiently to allow the commissioner to conduct the analyses and 
make the findings required by this subsection; and 

(ii) the field or pool has not previously produced oil or 
gas for sale; 

(B) to prolong the economic life of an oil or gas field or pool 
as costs per barrel or barrel equivalent increase; or 

(C) to reestablish production of shut-in oil or gas; 

(2) [the commissioner] may not grant a [reduction of] 
royalty modification unless the lessee or lessees requesting the modification make 
[reduction makes] a clear and convincing showing that a modification of royalty 
meets the requirements of this subsection and is in the best interests of the state; 

(3) shall 

(A) [the revenue from the lessee’s share of all 
hydrocarbons produced from the field is and is likely to 
continue to be insufficient to produce a reasonable rate 
of return with respect to the lessee’s total investment in 
the field. the commissioner may] condition any [a] royalty 
modification [reduction] granted under this subsection in any way necessary
to protect the state’s best interests;

(B) describe, in the findings and determinations required by this subsection, the relevant factors, including price, projected production rate or volume, predicted ultimate recovery, and development, operating, and transportation costs, upon which the modification is based;

(C) for a modification under (1)(A) of this subsection, set out the terms and conditions, which

(i) must include a mechanism for adjusting royalty percentage based on price; using forecasts of the range of future prices and their probabilities, the mechanism must provide that the value of the potential revenue increases resulting from royalty percentage increases must exceed the value of the potential revenue losses resulting from royalty percentage decreases; and

(ii) may include, in addition to the royalty percentage adjustment based on price, which must meet the conditions specified in (i) of this subparagraph, a further adjustment based on production rate or volume from the field or pool; and

(D) for a modification under (1)(B) or (1)(C) of this subsection, set out the terms and conditions, which may include substitution of a sliding scale royalty or other mechanism to modify the royalty if there is a change in the relevant factors, such as price, projected production rate or volume, predicted ultimate recovery, and development, operating, and transportation costs, upon which the modification is based;

(4) may not grant a royalty modification for a field or pool

(A) under (1)(A) of this subsection if the royalty modification for the field or pool would establish a royalty rate of less than five percent in amount or value of the production removed or sold from a lease or leases covering the field or pool;

(B) under (1)(B) or (1)(C) of this subsection if the royalty modification for the field or pool would establish a royalty rate of less than three percent in amount or value of the production removed or sold from a lease or leases covering the field or pool:
(5) may not grant a royalty modification under this subsection without including an explicit condition that the royalty modification is not assignable without the prior written approval of the commissioner; the commissioner shall, in the preliminary and final findings and determinations, set out the conditions under which the royalty modification may be assigned;

(6) shall require the lessee or lessees to submit, with the application for the royalty modification, financial and technical data that demonstrate that the requirements of this subsection are met; the commissioner shall

(A) require disclosure of the financial and technical data related to development, production, and transportation of oil and gas from the field or pool that are necessary to make a determination as to whether or not to grant the request for royalty modification; and

(B) keep the data described in (A) of this paragraph confidential under AS 38.05.035(a)(9) at the request of the lessee or lessees making application for the royalty modification; the confidential data may be disclosed by the commissioner to legislators and to the legislative auditor and as directed by the chair or vice-chair of the LB&A Committee to the director of the division of legislative finance, the permanent employees of their respective divisions who are responsible for evaluating a royalty modification, and to agents or contractors of the legislative auditor or the legislative finance director who are engaged under contract to evaluate the royalty modification, provided they sign an appropriate confidentiality agreement;

(7) may require the lessee or lessees making application for the royalty modification to pay for the services of an independent contractor, qualified to evaluate hydrocarbon development, production, transportation, and economics, who is selected by the commissioner to assist the commissioner in evaluating the application and financial and technical data; selection of an independent contractor under this paragraph is not subject to AS 36.30;

(8) shall

(A) make and publish a preliminary findings and determination on the royalty modification application; if the preliminary
findings and determination concerns a royalty modification under (1)(A) of this subsection, the preliminary findings and determination shall also be presented to the governor for the governor's approval or disapproval; the governor may not delegate a determination to approve or disapprove a preliminary findings and determination under this subparagraph;

(B) for a royalty modification under (1)(A) of this subsection, if the governor approves the preliminary findings and determination under (A) of this paragraph,

(i) give reasonable public notice of the preliminary findings and determination;

(ii) concurrently with the issuance of the public notice, unless directed by the Legislative Budget and Audit Committee to do otherwise, make available copies of the commissioner's preliminary findings and determination on the royalty modification application and the supporting financial and technical data, including the work papers, analyses, and recommendations of any contractors retained under (7) of this subsection, to persons authorized under (6)(B) of this subsection to review the data; and

(iii) invite public comment on the preliminary findings and determination during a 30-day period for receipt of public comment;

(C) for a royalty modification under (1)(B) or (C) of this subsection, if the preliminary findings and determination approves a royalty modification,

(i) give reasonable public notice of the preliminary findings and determination; and

(ii) invite public comment on the preliminary findings and determination during a 30-day period for receipt of public comment;

(9) shall address in any findings and determinations required under
this subsection the reasonably foreseeable effects of the proposed royalty
modification on the state's revenue;

(10) shall offer to appear before the Legislative Budget and Audit
Committee to provide the committee a review of the commissioner's preliminary
findings and determination on the royalty modification application and the
supporting financial and technical data; if the Legislative Budget and Audit
Committee accepts the commissioner's offer, the committee shall give notice of the
committee's meeting to all members of the legislature; if, under (6)(B) of this
subsection, the financial and technical data must be kept confidential at the
request of a lessee or lessees making application for the royalty modification, the
commissioner may appear before the committee in executive session;

(11) shall make copies of the preliminary findings and determination
available to

(A) the presiding officer of each house [INTEREST, INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE EVENT OF AN INCREASE IN THE PRICE OF OIL OR GAS. BEFORE APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS] of the legislature;

(B) the chairs of the legislature's standing committees on
resources; and

(C) the chairs of the legislature's special committees on oil
and gas, if any;

(12) shall, within 30 days after the close of the public comment
period under (8) of this subsection,

(A) prepare a summary of the public response to the
commissioner's preliminary findings and determination;

(B) make a final findings and determination and present it
to the governor for the governor's approval or disapproval; the governor
may not delegate a decision to approve or disapprove a final findings and
determination presented under this subparagraph; the commissioner's final
findings and determination regarding a royalty modification, if approved
by the governor, is final and not appealable to the court;

(C) transmit a copy of the final findings and determination
prepared under (B) of this paragraph to the lessee or lessees making
application for the royalty modification;

(D) with the consent of the lessee or lessees applying for the
royalty modification, amend the lease or unitization agreement of the lessee
or lessees applying for the royalty modification consistent with the
commissioner's approved final findings and determination; and

(E) make copies of the final findings and determination
available to each person who submitted comment under (8) of this subsection
and who has filed a request for the copies;

(13) is not limited by the provisions of AS 38.05.134(3) or (f) of this
section in the commissioner's determination under this subsection.

* Sec. 3. AS 38.05.180(p) is amended to read:

(p) To conserve the natural resources of all or a part of an oil or gas pool, field,
or like area, the lessees and their representatives may unite with each other, or jointly
or separately with others, in collectively adopting or operating under a cooperative or a
unit plan of development or operation of the pool, field, or like area, or a part of it, when
determined and certified by the commissioner to be necessary or advisable in the public
interest. The commissioner may, with the consent of the holders of leases involved,
establish, change, or revoke drilling, producing, and royalty requirements of the leases
and adopt regulations with reference to the leases, with like consent on the part of the
lessees, in connection with the institution and operation of a cooperative or unit plan as
the commissioner determines necessary or proper to secure the proper protection of the
public interest. The commissioner may not decrease royalty on leases in connection
with a cooperative or unit plan except as provided in (j) of this section. The
commissioner may require oil and gas leases issued under this section to contain a
provision requiring the lessee to operate under a reasonable cooperative or unit plan, and
may prescribe a plan under which the lessee must operate. The plan must adequately
protect all parties in interest, including the state.

* Sec. 4. AS 38.05.180(s) is amended to read:

(s) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communication or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement are considered as operations or production as to each lease committed to the agreement. The commissioner may not decrease royalty on leases in connection with a communization or drilling agreement except as provided in (j) of this section.

* Sec. 5. AS 38.05.180(t) is amended to read:

(t) The commissioner may prescribe conditions and approve, on conditions, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in the discretion of the commissioner, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts and interests under them, are excepted in determining holding or control under AS 38.05.140. The commissioner may not decrease royalty on a lease or leases that are subject to a drilling or development contract except as provided in (j) of this section.

* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).