

SENATE CS FOR CS FOR HOUSE BILL NO. 197(FIN) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/11/95

Offered: 5/2/95

Sponsor(s): REPRESENTATIVES FOSTER, Vezey, Kelly, Mulder, Toohey, Brice, Phillips, Mackie, James, Williams, Rokeberg, Ivan

SENATORS Kelly, Torgerson, Green, Leman, Miller, Taylor, Sharp, Frank, Halford

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for exploration incentive credits for activities involving locatable
2 and leasable mineral and coal deposits on certain land in the state; and
3 providing for an effective date."

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

5 * **Section 1.** AS 27 is amended by adding a new chapter to read:

6 CHAPTER 30. EXPLORATION INCENTIVE CREDITS.

7 Sec. 27.30.010. EXPLORATION INCENTIVE CREDITS AUTHORIZED.

8 (a) The commissioner shall grant to a person described in (d) of this section an
9 exploration incentive credit for the eligible costs of each of the following exploration
10 activities that are performed on or for the benefit of land in the state for the purpose of
11 determining the existence, location, extent, or quality of a locatable or leasable mineral
12 or coal deposit, regardless of whether the land is state-owned land:

- 13 (1) surveying by geophysical or geochemical methods;
14 (2) drilling exploration holes;
15 (3) conducting underground exploration;

1 (4) surface trenching and bulk sampling; or
2 (5) performing other exploratory work, including aerial photographs,
3 geological and geophysical logging, sample analysis, and metallurgical testing.

4 (b) Except as provided in (c) of this section, an exploration incentive credit may
5 not be granted under (a) of this section for exploration activity described in that
6 subsection that occurs after the mine construction commencement date of a new mine.
7 In this subsection, "mine construction commencement date of a new mine" means the
8 date no later than which all of the following have occurred:

9 (1) there has been issued to the owner or an agent of the owner permits,
10 leases, and title and other rights in land, and other approvals, permits, licenses, and
11 certificates, by federal, state, and local agencies that a reasonable and prudent person
12 would consider adequate to commence construction of a mine in the expectation that all
13 other approvals, permits, licenses, and certificates necessary for the completion of the
14 facilities will be obtained;

15 (2) all approvals, permits, licenses, and certificates are in full force and
16 effect, unrevoked and without any modification that might jeopardize the completion or
17 continued construction of the mine; and

18 (3) an order, judgment, decree, determination, or award of a court or
19 administrative or regulatory agency enjoining, either temporarily or permanently, the
20 construction or the continuation of construction of the mine is not in effect.

21 (c) In addition to the grant of an exploration incentive credit for a new mine
22 under (b) of this section, an exploration incentive credit may be granted under (a) of this
23 section for exploration activity described in that subsection for a mine that had
24 previously operated, has ceased to operate, and for which all previous mining approvals,
25 permits, licenses, and certificates that allowed the previous operation are no longer in
26 effect. However, under this subsection, an exploration incentive credit may not be
27 granted under (a) of this section for exploration activity that occurs after the mine
28 reopening date. In this subsection, "mine reopening date" means the date not later than
29 which all of the following have occurred:

30 (1) there has been issued to the owner or an agent of the owner permits,
31 leases, and title and other rights in land, and other approvals, permits, licenses, and
32 certificates, by federal, state, and local agencies that a reasonable and prudent person

1 would consider adequate to commence operation of the former mine in the expectation
2 that all other approvals, permits, licenses, and certificates necessary for the completion
3 of the facilities will be obtained;

4 (2) all approvals, permits, licenses, and certificates for the reopened mine
5 are in full force and effect, unrevoked, and without any modification that might
6 jeopardize the reopening of the former mine; and

7 (3) an order, judgment, decree, determination, or award of a court or
8 administrative or regulatory agency enjoining, either temporarily or permanently, the
9 reopening of the former mine is not in effect.

10 (d) An exploration incentive credit may be granted under this chapter only to

11 (1) a natural person who is at least 18 years of age;

12 (2) a partnership qualified to do business in the state;

13 (3) a corporation qualified to do business in the state;

14 (4) a limited liability company qualified to do business in the state;

15 (5) a legal guardian or trustee of a qualified natural person described in
16 (1) of this subsection; or

17 (6) any association of persons listed in (1) - (5) of this subsection.

18 Sec. 27.30.020. PROCEDURE FOR REQUESTING AND TAKING THE
19 CREDIT. To obtain the credit authorized by this chapter,

20 (1) a person shall submit a request for the credit as follows:

21 (A) the person shall submit a request and a statement of
22 expenditures for the previous calendar year not later than 60 days after the close
23 of that calendar year;

24 (B) the request must

25 (i) describe the work accomplished during the previous
26 year, the number of employees, and the names and number of
27 consultants; and

28 (ii) provide a detailed list or ledger of expenditures of the
29 accomplishments described in (i) of this subparagraph and a list of
30 exploration activity data that in the future will be made available to the
31 commissioner under (2)(A) of this section;

32 (C) the person submitting the request is not required to transmit

1 copies of receipts with the request, but the statement of expenditures is subject
2 to audit in the discretion of the commissioner;

3 (D) if the commissioner determines to audit the statement of
4 expenditures, the commissioner may require the person submitting the request to
5 justify claims of expenditures with receipts and other reliable information;

6 (E) the commissioner shall respond to the request by
7 September 30 by certifying or not certifying the person's expenditures; if the
8 commissioner

9 (i) does not certify expenditures, the commissioner shall
10 state the reasons for denial of certification and give the person making the
11 request an opportunity to correct any problems or to provide additional
12 information;

13 (ii) certifies expenditures, the commissioner shall specify
14 the exploration activity data requirements for that year that must be
15 presented to the department at the time of the taking of the credit;

16 (F) if the commissioner neither certifies nor denies certification
17 of expenditures by September 30, the expenditures are certified as submitted;

18 (2) the person whose expenditures have been certified under (1) of this
19 subsection may thereafter request the taking of the credit for the certified expenditures
20 as follows:

21 (A) the person shall deliver to the commissioner the exploration
22 activity data identified by the commissioner under (1)(E)(ii) of this section, and
23 shall request the commissioner's approval of the taking of the credit;

24 (B) the commissioner shall approve or disapprove the taking of
25 the credit within six months after receipt of the request for taking of the credit;
26 if the

27 (i) exploration activity data complies with the
28 requirements identified by the commissioner under (1)(E)(ii) of this
29 section, the commissioner shall approve the taking of the credit;

30 (ii) request is disapproved, the commissioner shall state
31 the reasons for disapproval and offer the person seeking to take the credit
32 an opportunity to correct any problems or to provide additional

1 exploration activity data or other information;

2 (C) if the commissioner neither approves nor disapproves the

3 request to take the credit within six months after submission of the request, the

4 taking of the credit is approved.

5 Sec. 27.30.030. APPLICATION OF THE CREDIT. (a) In a tax year or royalty

6 payment period, subject to (c) of this section and the respective limitations of this

7 subsection, the person may apply the credit, the taking of which was approved under

8 AS 27.30.020(2), against

9 (1) taxes payable by the person

10 (A) under AS 43.65; application of the credit under this

11 subparagraph may not exceed the lesser of

12 (i) 50 percent of the person's tax liability under AS 43.65

13 for the tax year that is related to production from the mining operation at

14 which the exploration activities occurred, as shown under (b) of this

15 section; or

16 (ii) 50 percent of the person's total tax liability under

17 AS 43.65 for the tax year;

18 (B) under AS 43.20; application of the credit under this

19 subparagraph may not exceed the lesser of

20 (i) an amount equal to the amount determined under

21 (A)(i) of this paragraph; or

22 (ii) 50 percent of the person's total tax liability under

23 AS 43.20 for the tax year; and

24 (2) mineral production royalty payments payable by the person under

25 AS 38.05.135 - 38.05.175 and 38.05.212 for production from the mining operation at

26 which the exploration activities occurred; application of the credit under this paragraph

27 may not exceed 50 percent of the person's mineral production royalty payment liability

28 from the mining operation at which the exploration activities occurred.

29 (b) If the person applies the credit against the person's tax liability under

30 (a)(1)(A)(i) or (a)(1)(B)(i) of this section, the commissioner of revenue shall disallow

31 application of the credit under that provision unless the person files with the person's tax

32 return an accounting of the person's mining operation activities for each mining operation

1 that is included in the tax return and as to which the credit is being applied. The
2 accounting of mining operation activities required by this subsection shall be made

3 (1) on a form prescribed by the Department of Revenue; on the form, the
4 person shall

5 (A) identify the mining operations for which the credit is claimed;

6 and

7 (B) set out the gross income attributable to the mining operations
8 and other information about the mining operations that the Department of
9 Revenue may require;

10 (2) without regard to an exemption to which the person may be entitled
11 under AS 43.65.010(a).

12 (c) The person may not apply the credit under this section if the application,
13 when added to credits previously applied under this section, would exceed the total
14 amount of the credits approved under AS 27.30.020(2).

15 Sec. 27.30.040. CREDIT MAY BE CARRIED FORWARD. Except as its
16 application is limited by AS 27.30.030 and 27.30.050, a portion of a credit that is not
17 applied under AS 27.30.030 during a tax year or royalty payment period may be carried
18 forward to and applied during a subsequent tax year or royalty payment period.

19 Sec. 27.30.050. LIMIT ON APPLICATION OF CREDIT. An exploration
20 incentive credit for a mining operation may not exceed \$20,000,000 and must be applied
21 within 15 tax years or royalty payment periods after the taking of the credit is approved
22 under AS 27.30.020(2), but the tax years or royalty payment periods in which the credit
23 is applied need not be

24 (1) the tax year or royalty payment period in which the person first incurs
25 liability for payment of tax or royalty based on the person's activity that is the basis of
26 the claim of the exploration incentive credit; or

27 (2) consecutive periods.

28 Sec. 27.30.060. ASSIGNMENT OF CREDIT. A person may assign an
29 exploration incentive credit to the person's successor in interest for the mining operation
30 at which the exploration activities occur, but only if the successor in interest is a person
31 qualified to obtain the credit under AS 27.30.010(d). An exploration incentive credit
32 may not be assigned except as permitted in this section.

1 Sec. 27.30.070. RESPONSIBILITY FOR RECORD OF USE OF CREDIT. For
2 each mining operation, the commissioner may require each person who proposes to take
3 the credit under AS 27.30.020(2) to provide with the request to take the credit a record
4 of

5 (1) the person's past use of credits taken under AS 27.30.020(2) and
6 27.30.030; and

7 (2) other information that the commissioner requires to determine if
8 approval of the taking of the credit by the person would exceed the limits on use of the
9 credit under this chapter.

10 Sec. 27.30.080. RELATIONSHIP TO OTHER FUNDS. Amounts due the
11 permanent fund under AS 37.13.010 shall be calculated before the application of a credit
12 extended under this chapter.

13 Sec. 27.30.090. CONFIDENTIALITY OF DATA. (a) The commissioner shall
14 keep the exploration activity data provided under AS 27.30.020 confidential for 36
15 months after receipt by the department.

16 (b) The department is liable in damages to a person who provided the
17 exploration activity data under AS 27.30.020 if the data is disclosed in violation of (a)
18 of this section.

19 Sec. 27.30.099. DEFINITIONS. In this chapter,

20 (1) "credit" means the exploration incentive credit for activities involving
21 locatable and leasable mineral and coal deposits authorized by this chapter;

22 (2) "eligible costs" mean the costs incurred for activities in direct support
23 of exploration activity conducted at the mining operation of the exploration activity for
24 the purpose of determining the existence, location, extent, or quality of a mineral or coal
25 deposit; the term

26 (A) includes

27 (i) the costs of obtaining the approvals, permits, licenses,
28 and certificates for an exploration activity set out in AS 27.30.010(a)(1) -
29 (5);

30 (ii) direct labor costs and the cost of benefits for
31 employees directly associated with work described in AS 27.30.010(a)(1)
32 - (5);

1 (iii) the cost of renting or leasing equipment from parties
2 not affiliated with the person requesting and taking the credit;
3 (iv) the reasonable costs of owning, maintaining, and
4 operating equipment;
5 (v) insurance and bond premiums associated with the
6 activities set out in (i) - (iv) of this subparagraph;
7 (vi) payments to consultants and independent contractors;
8 and
9 (vii) the general expense of operating the person's
10 business, including the costs of materials and supplies, if those expenses
11 and costs are directly attributable to the work described in
12 AS 27.30.010(a)(1) - (5);
13 (B) does not include return on investment, insurance or bond
14 premiums not covered under (A)(v) of this paragraph, or any other expense that
15 the person has not incurred to complete work described in AS 27.30.010(a)(1) -
16 (5);
17 (3) "exploration activity data" includes, as applicable,
18 (A) a representative skeleton core for each hole cored or a
19 representative set of cuttings for each hole rotary drilled;
20 (B) chemical analytical data and noninterpretive geophysical data;
21 (C) aerial photographs or a topographic or geologic map showing
22 the location of the drill holes, sample locations, or the other exploration activities
23 undertaken;
24 (4) "geochemical methods" means soil, rock, water, air, vegetation, and
25 similar samples collected and their chemical analyses;
26 (5) "geophysical methods" means all geophysical data gathering methods
27 used in mineral or coal exploration, including seismic, gravity, magnetic, radiometric,
28 radar, and electromagnetic and other remote sensing measurements;
29 (6) "mining operation" includes all operating and nonoperating activities
30 related to a mineral deposit interest, and may be comprised of one or more mining
31 properties; in determining whether mining properties are part of the same mining
32 operation, the commissioner may consider whether the operation, in conducting mining

activities on several mining properties, uses common personnel, supply, and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines and transportation equipment, and mining techniques and technology, and may also consider the extent to which the mineral deposit interest comprises a common mining property;

(7) "person" means only those persons listed in AS 27.30.010(d).

* **Sec. 2.** AS 38.05.150(d) is amended to read:

(d) For the privilege of mining or extracting the coal in the land covered by the lease, the lessee

(1) shall pay to the state the royalties specified in the lease; ~~the~~ [THE] royalties shall be fixed before offering the lease, and shall be effective for a period of not more than 20 years; ~~the~~ [THE] royalties shall be not less than five cents a ton of 2,000 pounds; **the royalty payment is subject to the exploration incentive credit authorized by AS 27.30;**

(2) [THE LESSEE] shall also pay an annual rental, payable at the date of the lease and annually thereafter, on the land or coal deposits covered by the lease, at a rate fixed by the commissioner before offering the lease; ~~the~~ [THE] annual rental shall be effective for a period of not more than 20 years; ~~the~~ [THE] annual rental shall be not less than 25 cents an acre for the first year of the lease, not less than 50 cents an acre for the second year, third year, fourth year and fifth year, and not less than \$1 an acre for each year thereafter during the continuance of the lease; ~~the~~ [THE] rental for each year shall be credited against the royalties as they accrue for that year; **each** [EACH] lease shall provide that the annual rental payment is subject to adjustment at intervals of no more than 20 years and adjustments shall be based on the current rates for properties similarly situated.

* **Sec. 3.** AS 38.05.212(b) is amended to read:

(b) The production royalty

(1) is three percent of net income as determined under AS 43.65; **and**

(2) **is subject to the exploration incentive credit authorized by**

AS 27.30.

* **Sec. 4.** AS 43.20 is amended by adding a new section to read:

Sec. 43.20.044. EXPLORATION INCENTIVE CREDIT. (a) A taxpayer may apply as a credit against the tax levied under this chapter the exploration incentive credit

1 authorized by AS 27.30.

2 (b) In a tax year in which a taxpayer applies against the tax levied under this
3 chapter the exploration incentive credit authorized by AS 27.30, the commissioner shall
4 require the taxpayer to submit the accounting of mining operation activities form required
5 by AS 27.30.030(b).

6 * **Sec. 5.** AS 43.65.020(a) is amended to read:

7 (a) A person subject to tax under this chapter shall make a return stating
8 specifically the items of gross income from the property, including royalty received and
9 the deductions and credits allowed by this chapter **and the exploration incentive credit**
10 **authorized by AS 27.30**, and other information for carrying out this chapter that the
11 department prescribes. The return must show the mining license number and must be
12 signed by the taxpayer or an authorized agent of the taxpayer, under penalty of unsworn
13 falsification. If receivers, trustees, or assigns are operating the property or business, they
14 shall make returns for the person engaged in mining, or the recipient of royalty in
15 connection with mining property. The tax due on the basis of the returns shall be
16 collected in the same manner as if collected from the person of whose business they have
17 custody and control. **In a tax year in which a taxpayer applies against the tax levied**
18 **under this chapter the exploration incentive credit authorized by AS 27.30, the**
19 **commissioner shall require the taxpayer to submit the accounting of mining**
20 **operation activities form required by AS 27.30.030(b).**

21 * **Sec. 6.** This Act is retroactive to January 1, 1995, and applies to activities that qualify for
22 the exploration incentive credit authorized by AS 27.30 that are undertaken after May 15, 1995.

23 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).