

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

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

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

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

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

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

13 (j) **The** [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS
14 FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR

1 GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE]
2 commissioner

3 (1) may provide for an increase or decrease or otherwise modify
4 [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION OF] royalty, to allow
5 for production that would not otherwise be economically feasible, on individual
6 leases, leases unitized as described in (p) of this section, leases subject to an
7 agreement described in (s) or (t) of this section, or interests unitized under
8 AS 31.05; the commissioner may act under this subsection to modify the royalty

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

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

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

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

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

22 (2) [. THE COMMISSIONER] may not grant a [REDUCTION OF]
23 royalty modification unless the lessee or lessees requesting the modification make
24 [REDUCTION MAKES] a clear and convincing showing that a modification of royalty
25 meets the requirements of this subsection and is in the best interests of the state;

26 (3) shall

27 (A) [THE REVENUE FROM THE LESSEE'S SHARE OF ALL
28 HYDROCARBONS PRODUCED FROM THE FIELD IS AND IS LIKELY TO
29 CONTINUE TO BE INSUFFICIENT TO PRODUCE A REASONABLE RATE
30 OF RETURN WITH RESPECT TO THE LESSEE'S TOTAL INVESTMENT IN
31 THE FIELD. THE COMMISSIONER MAY] condition any [A] royalty
32 modification [REDUCTION] granted under this subsection in any way necessary

1 to protect the state's best interests;

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

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

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

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

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

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

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

29 (B) under (1)(B) or (1)(C) of this subsection if the royalty
30 modification for the field or pool would establish a royalty rate of less than
31 three percent in amount or value of the production removed or sold from a
32 lease or leases covering the field or pool;

1 (5) may not grant a royalty modification under this subsection
2 without including an explicit condition that the royalty modification is not
3 assignable without the prior written approval of the commissioner; the
4 commissioner shall, in the preliminary and final findings and determinations, set out
5 the conditions under which the royalty modification may be assigned;

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

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

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

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

30 (8) shall

31 (A) make and publish a preliminary findings and
32 determination on the royalty modification application; if the preliminary

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

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

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

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

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

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

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

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

31 (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

1 may not delegate a decision to approve or disapprove a final findings and
2 determination presented under this subparagraph; the commissioner's final
3 findings and determination regarding a royalty modification, if approved
4 by the governor, is final and not appealable to the court;

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

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

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

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

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

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

1 protect all parties in interest, including the state.

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

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

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

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

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