



LAWS OF ALASKA

2003

Source
CSSSHB 28(FIN)

Chapter No.

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:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to adjustments to royalty reserved to the state to encourage otherwise uneconomic
2 production of oil and gas; and providing for an effective date.

3
4 * **Section 1.** AS 38.05.180(j) is amended to read:

5 (j) The commissioner

6 (1) may provide for **modification of** [AN INCREASE OR
7 DECREASE OR OTHERWISE MODIFY] royalty [, TO ALLOW FOR
8 PRODUCTION THAT WOULD NOT OTHERWISE BE ECONOMICALLY
9 FEASIBLE,] on individual leases, leases unitized as described in (p) of this section,
10 leases subject to an agreement described in (s) or (t) of this section, or interests
11 unitized under AS 31.05 [; THE COMMISSIONER MAY ACT UNDER THIS
12 SUBSECTION TO MODIFY THE ROYALTY]

13 (A) [AFTER JUNE 20, 1995 AND NOT LATER THAN JULY
14 1, 2015, SO LONG AS THE AUTHORITY TO MODIFY ROYALTY

1 UNDER THIS SUBPARAGRAPH HAS BEEN AUTHORIZED OR
2 REAUTHORIZED BY LAW WITHIN THE TEN YEARS PRECEDING THE
3 COMMISSIONER'S ACTION TO MODIFY THE ROYALTY,] to allow for
4 production from an oil or gas field or pool if

5 (i) the oil or gas field or pool has been sufficiently
6 delineated [SUFFICIENTLY] to the satisfaction of [ALLOW] the
7 commissioner [TO CONDUCT THE ANALYSES AND MAKE THE
8 FINDINGS REQUIRED BY THIS SUBSECTION]; [AND]

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

11 (iii) oil or gas production from the field or pool
12 would not otherwise be economically feasible;

13 (B) to prolong the economic life of an oil or gas field or pool as
14 per barrel or barrel equivalent costs [PER BARREL OR BARREL
15 EQUIVALENT] increase or as the price of oil or gas decreases, and the
16 increase or decrease is sufficient to make future production no longer
17 economically feasible; or

18 (C) to reestablish production of shut-in oil or gas that would
19 not otherwise be economically feasible;

20 (2) may not grant a royalty modification unless the lessee or lessees
21 requesting the change [MODIFICATION] make a clear and convincing showing that
22 a modification of royalty meets the requirements of this subsection and is in the best
23 interests of the state;

24 (3) shall provide for an increase or decrease or other modification
25 of the state's royalty share by a sliding scale royalty or other mechanism that
26 shall be based on a change in the price of oil or gas and may also be based on
27 other relevant factors such as a change in production rate, projected ultimate
28 recovery, development costs, and operating costs

29 [(A) CONDITION ANY ROYALTY MODIFICATION
30 GRANTED UNDER THIS SUBSECTION IN ANY WAY NECESSARY TO
31 PROTECT THE STATE'S BEST INTERESTS;

1 (B) DESCRIBE, IN THE FINDINGS AND
2 DETERMINATIONS REQUIRED BY THIS SUBSECTION, THE
3 RELEVANT FACTORS, INCLUDING PRICE, PROJECTED
4 PRODUCTION RATE OR VOLUME, PREDICTED ULTIMATE
5 RECOVERY, AND DEVELOPMENT, OPERATING, AND
6 TRANSPORTATION COSTS, UPON WHICH THE MODIFICATION IS
7 BASED;

8 (C) FOR A MODIFICATION UNDER (1)(A) OF THIS
9 SUBSECTION, SET OUT THE TERMS AND CONDITIONS, WHICH

10 (i) MUST INCLUDE A MECHANISM FOR
11 ADJUSTING ROYALTY PERCENTAGE BASED ON PRICE;
12 USING FORECASTS OF THE RANGE OF FUTURE PRICES AND
13 THEIR PROBABILITIES, THE MECHANISM MUST PROVIDE
14 THAT THE VALUE OF THE POTENTIAL REVENUE INCREASES
15 RESULTING FROM ROYALTY PERCENTAGE INCREASES
16 MUST EXCEED THE VALUE OF THE POTENTIAL REVENUE
17 LOSSES RESULTING FROM ROYALTY PERCENTAGE
18 DECREASES; AND

19 (ii) MAY INCLUDE, IN ADDITION TO THE
20 ROYALTY PERCENTAGE ADJUSTMENT BASED ON PRICE,
21 WHICH MUST MEET THE CONDITIONS SPECIFIED IN (i) OF
22 THIS SUBPARAGRAPH, A FURTHER ADJUSTMENT BASED ON
23 PRODUCTION RATE OR VOLUME FROM THE FIELD OR POOL;
24 AND

25 (D) FOR A MODIFICATION UNDER (1)(B) OR (1)(C) OF
26 THIS SUBSECTION, SET OUT THE TERMS AND CONDITIONS, WHICH
27 MAY INCLUDE SUBSTITUTION OF A SLIDING SCALE ROYALTY OR
28 OTHER MECHANISM TO MODIFY THE ROYALTY IF THERE IS A
29 CHANGE IN THE RELEVANT FACTORS, SUCH AS PRICE, PROJECTED
30 PRODUCTION RATE OR VOLUME, PREDICTED ULTIMATE
31 RECOVERY, AND DEVELOPMENT, OPERATING, AND

1 TRANSPORTATION COSTS, UPON WHICH THE MODIFICATION IS
2 BASED];

3 (4) may not grant a royalty **reduction** [MODIFICATION] for a field
4 or pool

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

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

13 (5) may not grant a royalty **reduction** [MODIFICATION] under this
14 subsection without including an explicit condition that the royalty **reduction**
15 [MODIFICATION] is not assignable without the prior written approval, **which may**
16 **not be unreasonably withheld, by** [OF] the commissioner; the commissioner shall, in
17 the preliminary and final findings and determinations, set out the conditions under
18 which the royalty **reduction** [MODIFICATION] may be assigned;

19 (6) shall require the lessee or lessees to submit, with the application for
20 the royalty **reduction** [MODIFICATION], financial and technical data that
21 demonstrate that the requirements of this subsection are met; the commissioner
22 [SHALL]

23 (A) **may** require disclosure of **only** the financial and technical
24 data related to development, production, and transportation of oil and gas from
25 the field or pool that are **reasonably available to the applicant**
26 [NECESSARY TO MAKE A DETERMINATION AS TO WHETHER OR
27 NOT TO GRANT THE REQUEST FOR ROYALTY MODIFICATION]; and

28 (B) **shall** keep the data [DESCRIBED IN (A) OF THIS
29 PARAGRAPH] confidential under AS 38.05.035(a)(9) at the request of the
30 lessee or lessees making application for the royalty **reduction**
31 [MODIFICATION]; the confidential data may be disclosed by the

1 commissioner to legislators and to the legislative auditor and as directed by the
2 chair or vice-chair of the Legislative Budget and Audit Committee to the
3 director of the division of legislative finance, the permanent employees of their
4 respective divisions who are responsible for evaluating a royalty **reduction**
5 [MODIFICATION], and to agents or contractors of the legislative auditor or
6 the legislative finance director who are engaged under contract to evaluate the
7 royalty **reduction** [MODIFICATION], if they sign an appropriate
8 confidentiality agreement;

9 (7) may

10 (A) require the lessee or lessees making application for the
11 royalty **reduction under (1)(A) of this subsection** [MODIFICATION] to pay
12 for the services of an independent contractor, **selected by the lessee or lessees**
13 **from a list of** qualified **consultants compiled by the commissioner**, to
14 evaluate hydrocarbon development, production, transportation, and economics
15 **and** [WHO IS SELECTED BY THE COMMISSIONER] to assist the
16 commissioner in evaluating the application and financial and technical data; **if,**
17 **under this subparagraph, the commissioner requires payment for the**
18 **services of an independent contractor, the total cost of the services to be**
19 **paid for by the lessee or lessees may not exceed \$150,000 for each**
20 **application, and the commissioner shall determine the relevant scope of**
21 **the work to be performed by the contractor;** selection of an independent
22 contractor under this **subparagraph** [PARAGRAPH] is not subject to
23 AS 36.30;

24 (B) **with the mutual consent of the lessee or lessees making**
25 **application for the royalty reduction under (1)(B) or (1)(C) of this**
26 **subsection, request payment for the services of an independent contractor,**
27 **selected from a list of qualified consultants to evaluate hydrocarbon**
28 **development, production, transportation, and economics by the**
29 **commissioner to assist the commissioner in evaluating the application and**
30 **financial and technical data; if, under this subparagraph, the**
31 **commissioner requires payment for the services of an independent**

contractor, the total cost of the services that may be paid for by the lessee or lessees may not exceed \$150,000 for each application, and the commissioner shall determine the relevant scope of the work to be performed by the contractor; selection of an independent contractor under this subparagraph is not subject to AS 36.30;

(8) shall

[(A)] make and publish a preliminary findings and determination on the royalty reduction [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,

1 TO PERSONS AUTHORIZED UNDER (6)(B) OF THIS
2 SUBSECTION TO REVIEW THE DATA;] and

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

6 [(C) FOR A ROYALTY MODIFICATION UNDER (1)(B) OR
7 (C) OF THIS SUBSECTION, IF THE PRELIMINARY FINDINGS AND
8 DETERMINATION APPROVES A ROYALTY MODIFICATION,

9 (i) GIVE REASONABLE PUBLIC NOTICE OF THE
10 PRELIMINARY FINDINGS AND DETERMINATION; AND

11 (ii) INVITE PUBLIC COMMENT ON THE
12 PRELIMINARY FINDINGS AND DETERMINATION DURING A
13 30-DAY PERIOD FOR RECEIPT OF PUBLIC COMMENT;]

14 (9) [SHALL ADDRESS IN ANY FINDINGS AND
15 DETERMINATIONS REQUIRED UNDER THIS SUBSECTION THE
16 REASONABLY FORESEEABLE EFFECTS OF THE PROPOSED ROYALTY
17 MODIFICATION ON THE STATE'S REVENUE;

18 (10)] shall offer to appear before the Legislative Budget and Audit
19 Committee, **on a day that is not earlier than 10 days and not later than 20 days**
20 **after giving public notice under (8) of this subsection,** to provide the committee a
21 review of the commissioner's preliminary findings and determination on the royalty
22 **reduction** [MODIFICATION] application and **administrative process** [THE
23 SUPPORTING FINANCIAL AND TECHNICAL DATA]; if the Legislative Budget
24 and Audit Committee accepts the commissioner's offer, the committee shall give
25 notice of the committee's meeting to all members of the legislature;

26 **(10)** [IF, UNDER (6)(B) OF THIS SUBSECTION, THE FINANCIAL
27 AND TECHNICAL DATA MUST BE KEPT CONFIDENTIAL AT THE REQUEST
28 OF A LESSEE OR LESSEES MAKING APPLICATION FOR THE ROYALTY
29 MODIFICATION, THE COMMISSIONER MAY APPEAR BEFORE THE
30 COMMITTEE IN EXECUTIVE SESSION;

31 (11)] shall make copies of the preliminary findings and determination

1 available to

2 (A) the presiding officer of each house of the legislature;

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

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

7 **(11)** [(12)] shall, within 30 days after the close of the public comment
8 period under (8) of this subsection,

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

11 (B) make a final findings and determination [AND PRESENT
12 IT TO THE GOVERNOR FOR THE GOVERNOR'S APPROVAL OR
13 DISAPPROVAL; THE GOVERNOR MAY NOT DELEGATE A DECISION
14 TO APPROVE OR DISAPPROVE A FINAL FINDINGS AND
15 DETERMINATION PRESENTED UNDER THIS SUBPARAGRAPH]; the
16 commissioner's final findings and determination **prepared under this**
17 **subparagraph** regarding a royalty **reduction** [MODIFICATION, IF
18 APPROVED BY THE GOVERNOR,] is final and not appealable to the court;

19 (C) transmit a copy of the final findings and determination
20 [PREPARED UNDER (B) OF THIS PARAGRAPH] to the lessee [OR
21 LESSEES MAKING APPLICATION FOR THE ROYALTY
22 MODIFICATION];

23 (D) with the **applicant's** consent [OF THE LESSEE OR
24 LESSEES APPLYING FOR THE ROYALTY MODIFICATION], amend the
25 **applicant's** lease or unitization agreement [OF THE LESSEE OR LESSEES
26 APPLYING FOR THE ROYALTY MODIFICATION] consistent with the
27 commissioner's [APPROVED] final **decision** [FINDINGS AND
28 DETERMINATION]; and

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

1 **(12)** [(13)] is not limited by the provisions of AS 38.05.134(3) or (f) of
2 this section in the commissioner's determination under this subsection.

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

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

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

22 (s) When separate tracts cannot be individually developed and operated in
23 conformity with an established well-spacing or development program, a lease, or a
24 portion of a lease, may be pooled with other land, whether or not owned by the state,
25 under a communitization or drilling agreement providing for an apportionment of
26 production or royalties among the separate tracts of land comprising the drilling or
27 spacing unit when determined by the commissioner to be in the public interest.
28 Operations or production under the agreement are considered as operations or
29 production as to each lease committed to the agreement. The commissioner may not
30 **reduce** [DECREASE] royalty on leases in connection with a communitization or
31 drilling agreement except as provided in (j) of this section.

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

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

11 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).