

32-GH1706/I
Nauman
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CS FOR HOUSE BILL NO. 81(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the commissioner of natural resources to modify a net profit share
2 lease."

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

4 * **Section 1.** AS 36.30.850(b)(32) is amended to read:

5 (32) a contract [CONTRACTS] between the Department of Natural
6 Resources and a contractor [CONTRACTORS] qualified to evaluate hydrocarbon
7 development, production, transportation, and economics, to assist the commissioner of
8 natural resources in evaluating applications for a royalty or net profit share
9 modification under AS 38.05.180(j) [INCREASES OR DECREASES OR OTHER
10 ROYALTY ADJUSTMENTS,] and evaluating the related financial and technical data
11 [, ENTERED INTO UNDER AS 38.05.180(j)];

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

13 (j) The commissioner

14 (1) may provide for modification of a royalty or net profit share 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

(A) to allow for production from an oil or gas field or pool if

(i) the oil or gas field or pool has been sufficiently delineated to the satisfaction of the commissioner;

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

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

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

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

(D) to prolong the economic life of an oil or gas field or pool from which, without additional capital expenditures, future production would no longer be economically feasible; a royalty modification may not be made under this subparagraph;

(2) may not grant a royalty **or net profit share** modification unless the lessee or lessees requesting the change make a clear and convincing showing that [A] modification of **the** royalty **or net profit share** meets the requirements of this subsection and is in the best interests of the state;

(3) shall provide for an increase or decrease or other modification of the state's royalty **or net profit** share by a **fixed royalty**, sliding scale royalty, **net profit share adjustment**, or other mechanism [THAT SHALL BE] based on a change in the price of oil or gas **or** [AND MAY ALSO BE BASED] on other relevant factors, **including** [SUCH AS] a change in production rate, projected ultimate recovery, development costs, and operating costs;

(4) may not grant a royalty reduction 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 net profit share modification for a field or pool under (1) of this subsection that would reduce a share reserved to the state to less than 10 percent of the net profit derived from the lease;

(6) may not grant a net profit share modification for a field or pool under (1)(D) of this subsection unless

(A) the modification requires the lessee or lessees to make the capital expenditures necessary for production to be economically feasible; and

(B) the commissioner determines that the capital expenditures made under (A) of this paragraph are sufficient to maximize production from the field or pool;

(7) [(5)] may not grant a royalty **or net profit share** reduction under this subsection without including an explicit condition that the royalty **or net profit share** reduction is not assignable without the prior written approval, which may not be unreasonably withheld, by the commissioner; the commissioner shall, in the preliminary and final findings and determinations, set out the conditions under which the royalty **or net profit share** reduction may be assigned;

(8) [(6)] shall require the lessee or lessees to submit, with the application for the royalty **or net profit share** reduction, financial and technical data that demonstrate that the requirements of this subsection are met; the commissioner

(A) may require disclosure of only the financial and technical data related to development, production, and transportation of oil and gas or gas only from the field or pool that are reasonably available to the applicant; and

(B) shall keep the data confidential under AS 38.05.035(a)(8) at the request of the lessee or lessees making application for the royalty or net profit share reduction; 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 Legislative Budget and Audit Committee to the director of the division of legislative finance, the permanent employees of their respective divisions who are responsible for evaluating a royalty or net profit share reduction, and to agents or contractors of the legislative auditor or the legislative finance director who are engaged under contract to evaluate the royalty or net profit share reduction, if they sign an appropriate confidentiality agreement;

(9) [(7)] may

(A) require the lessee or lessees making application for the royalty reduction under (1)(A) of this subsection or a net profit share reduction under (1)(A) or (1)(D) of this subsection to pay for the services of an independent contractor, selected by the lessee or lessees from a list of qualified consultants compiled by the commissioner, to evaluate hydrocarbon development, production, transportation, and economics and to assist the commissioner in evaluating the application and financial and technical data; if, under this subparagraph, the commissioner requires payment for the services of an independent contractor, the total cost of the services to 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;

(B) with the mutual consent of the lessee or lessees making application for the royalty or net profit share reduction under (1)(B) or (1)(C) of this subsection, request payment for the services of an independent contractor, selected from a list of qualified consultants to evaluate hydrocarbon development, production, transportation, and economics by the commissioner to assist the commissioner in evaluating the application and financial and

technical data; if, under this subparagraph, the 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;

(10) [(8)] shall make and publish a preliminary findings and determination on the royalty **or net profit share** reduction application, give reasonable public notice of the preliminary findings and determination, and invite public comment on the preliminary findings and determination during a 30-day period for receipt of public comment;

(11) [(9)] shall offer to appear before the Legislative Budget and Audit Committee, on a day that is not earlier than 10 days and not later than 20 days after giving public notice under **(9)** [(8)] of this subsection, to provide the committee a review of the commissioner's preliminary findings and determination on the royalty **or net profit share** reduction application and administrative process; 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;

(12) [(10)] shall make copies of the preliminary findings and determination available to

(A) the presiding officer of each house 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;

(13) [(11)] shall, within 30 days after the close of the public comment period under **(9)** [(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; the commissioner's final findings and determination prepared under this

subparagraph regarding a royalty or net profit share reduction is final and not appealable to the court;

(C) transmit a copy of the final findings and determination to the lessee;

(D) with the applicant's consent, amend the applicant's lease or unitization agreement consistent with the commissioner's final decision; and

(E) make copies of the final findings and determination available to each person who submitted comment under (9) [(8)] of this subsection and who has filed a request for the copies;

(14) [(12)] 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 reduce the royalty or net profit share on a lease [LEASES] in connection with a cooperative or unit plan except as provided in (j) of this section. The commissioner may require a lease 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

1 conformity with an established well-spacing or development program, a lease, or a
2 portion of a lease, may be pooled with other land, whether or not owned by the state,
3 under a communitization or drilling agreement providing for an apportionment of
4 production or royalties among the separate tracts of land comprising the drilling or
5 spacing unit when determined by the commissioner to be in the public interest.
6 Operations or production under the agreement are considered as operations or
7 production as to each lease committed to the agreement. The commissioner may not
8 reduce the royalty or net profit share on a lease [LEASES] in connection with a
9 communitization or drilling agreement except as provided in (j) of this section.

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

11 (t) The commissioner may prescribe conditions and approve, on conditions, a
12 drilling [,] or development contract [CONTRACTS] made by one or more lessees of
13 oil or gas leases, with one or more persons, when, in the discretion of the
14 commissioner, the conservation of natural resources or the public convenience or
15 necessity requires it or the interests of the state are best served. A lease [ALL
16 LEASES] operated under an approved drilling or development contract,
17 [CONTRACTS] and interests under the contract [THEM], are excepted in
18 determining holding or control under AS 38.05.140. The commissioner may not
19 reduce the royalty or net profit share on a lease [OR LEASES] that is [ARE] subject
20 to a drilling or development contract except as provided in (j) of this section.