

CS FOR HOUSE BILL NO. 197(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/22/95
Referred: Finance

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

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 qualified applicant an exploration incentive credit
9 for the eligible costs of each of the following exploration activities that are performed
10 on or for the benefit of land in the state for the purpose of determining the existence,
11 location, extent, or quality of a locatable or leasable mineral or coal deposit, regardless
12 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) An exploration incentive credit may not be granted under (a) of this section
5 for exploration activity described in that subsection that occurs after the mine
6 construction commencement date. In this subsection, "mine construction commencement
7 date" means the date no later than which all of the following have occurred:

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

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

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

20 Sec. 27.30.020. APPLICATION OF CREDIT. An exploration incentive credit
21 granted under AS 27.30.030 may be

22 (1) applied, at the discretion of the qualified applicant, against

23 (A) taxes payable under AS 43.20 and AS 43.65 that are related
24 to production from the site on which the exploration activities occur;

25 (B) mineral production royalty payments due the state under
26 AS 38.05.135 - 38.05.175 and 38.05.212 for production from the site on which
27 the exploration activities occur; and

28 (C) annual rent payable under AS 38.05.211 for the site on which
29 the exploration activities occur;

30 (2) carried forward to a subsequent tax year or royalty or rental payment
31 period, except as limited by AS 27.30.040.

32 Sec. 27.30.030. PROCEDURE FOR OBTAINING THE CREDIT. To obtain

1 the credit authorized by this chapter,

2 (1) the prospective credit applicant must certify annual expenditures and
3 obtain approval of an annual certification of expenditures as follows:

4 (A) the applicant must submit a certification of expenditures for
5 the previous calendar year not later than 60 days after the close of that calendar
6 year;

7 (B) the certification must describe the work accomplished during
8 the previous year, the number of employees, and the names and number of
9 consultants, and provide a detailed list or ledger of expenditures;

10 (C) the applicant is not required to transmit copies of receipts
11 with the certification, but the certification is subject to audit in the discretion of
12 the commissioner;

13 (D) if the commissioner determines to audit the applicant's
14 certificate, the commissioner may require the prospective credit applicant to
15 justify claims of expenditures with receipts and other reliable information;

16 (E) the commissioner shall respond to the prospective credit
17 applicant's certification of expenditures by September 30 by approving or
18 disapproving the certification; if the commissioner

19 (i) disapproves the applicant's certification, the
20 commissioner shall state the reasons for disapproval and give the
21 applicant an opportunity to correct any problems or to provide additional
22 information;

23 (ii) approves the applicant's certification, the
24 commissioner shall certify the applicant's expenditures and specify the
25 exploration activity data requirements for that year that must be presented
26 to the department at the time of application for the credit;

27 (F) if the commissioner neither approves nor disapproves the
28 certification of expenditures by September 30, the certified expenditures are
29 automatically approved;

30 (2) the prospective credit applicant whose annual certification of
31 expenditures has been approved under (1) of this subsection may thereafter request
32 approval of the credit for the certified expenditures as follows:

1 (A) the credit applicant shall deliver to the commissioner the
2 exploration activity data identified by the commissioner under (1)(E)(ii) of this
3 section, and shall request the commissioner's approval of the exploration
4 incentive credit;

5 (B) the commissioner shall approve or disapprove the credit
6 application within six months after receipt of the application for credit; if the

7 (i) exploration activity data complies with the
8 requirements identified by the commissioner under (1)(E)(ii) of this
9 section, the commissioner shall approve the credit;

10 (ii) credit application is disapproved, the commissioner
11 shall state the reasons for disapproval and offer the applicant an
12 opportunity to correct any problems or to provide additional exploration
13 activity data or other information;

14 (C) if the commissioner neither approves nor disapproves the
15 credit application within six months after submission of the credit application, the
16 credit is approved.

17 Sec. 27.30.040. LIMIT ON CREDITS. (a) The amount of the exploration
18 incentive credit for each site that may be taken during a tax year or royalty payment
19 period may not exceed 50 percent of the combined amount payable by the applicant as

20 (1) taxes payable under AS 43.20 and AS 43.65 that are related to
21 production from the site on which the exploration activities occur;

22 (2) mineral production royalty payments due the state under
23 AS 38.05.135 - 38.05.175 and 38.05.212 for production from the site on which the
24 exploration activities occur; and

25 (3) annual rent payable under AS 38.05.211 for the site on which the
26 exploration activities occur.

27 (b) Except as its application or use is limited by AS 27.30.020 and 27.30.050,
28 a portion of a credit that is not applied or used under (a) of this section may be carried
29 forward to and applied during a subsequent tax year or royalty or rental payment period.

30 Sec. 27.30.050. USE OF CREDIT. An exploration incentive credit

31 (1) must be used within 15 tax years or royalty or rental payment periods
32 after it is approved under AS 27.30.030(a)(2), but the tax years or royalty or rental

1 payment periods in which the credit is used need not be

2 (A) the tax year or royalty or rental payment period in which the
3 qualified applicant first incurs liability for payment of tax, royalty, or rent based
4 on the applicant's activity that is the basis of the claim of the exploration
5 incentive credit; or

6 (B) consecutive periods; and

7 (2) may, for the purposes described in AS 27.30.020, be assigned by the
8 qualified applicant to the applicant's successor in interest for the site at which the
9 exploration activities occur if the successor in interest is a qualified applicant; once the
10 applicant has assigned the credit to a successor in interest, the applicant may not use the
11 assigned credit.

12 Sec. 27.30.060. RELATIONSHIP TO OTHER FUNDS. Amounts due the
13 permanent fund under AS 37.13.010 shall be calculated before the application of a credit
14 extended under this chapter.

15 Sec. 27.30.070. CONFIDENTIALITY OF DATA. (a) The commissioner shall
16 keep the exploration activity data provided under AS 27.30.030 confidential for 36
17 months after receipt by the department.

18 (b) The department is liable in damages to a person who provided the
19 exploration activity data under AS 27.30.030 if the data is disclosed in violation of (a)
20 of this section.

21 Sec. 27.30.090. DEFINITIONS. In this chapter,

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

3 (iv) the reasonable costs of maintaining and operating
4 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 taxpayer'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 noncash expenses such as depreciation and
14 reserves, interest or other costs of borrowed funds, return on investment,
15 insurance or bond premiums not covered under (A)(v) of this paragraph, or any
16 other expense that is unreasonable or that the applicant has not incurred to
17 complete work described in AS 27.30.010(a)(1) - (5);

18 (2) "exploration activity data" includes, as applicable,

19 (A) a representative skeleton core for each hole cored or a
20 representative set of cuttings for each hole rotary drilled;

21 (B) chemical analytical data and noninterpretive geophysical data;

22 (C) aerial photographs or a topographic or geologic map showing
23 the location of the drill holes, sample locations, or the other exploration activities
24 undertaken;

25 (3) "geochemical methods" means soil, rock, water, air, vegetation, and
26 similar samples collected and their chemical analyses;

27 (4) "geophysical methods" means all geophysical data gathering methods
28 used in mineral or coal exploration, including seismic, gravity, magnetic, radiometric,
29 radar, and electromagnetic and other remote sensing measurements;

30 (5) "qualified applicant" means

31 (A) a natural person who is at least 18 years of age;

32 (B) a partnership qualified to do business in the state;

- 1 (C) a corporation qualified to do business in the state;
2 (D) a limited liability company qualified to do business in the
3 state;
4 (E) a legal guardian or trustee of a qualified natural person
5 described in (A) of this paragraph; or
6 (F) any association of persons listed in (A) - (E) of this
7 paragraph.

8 * **Sec. 2.** AS 38.05.135(a) is amended to read:

9 (a) Except as otherwise provided, valuable mineral deposits in land belonging
10 to the state shall be open to exploration, development, and the extraction of minerals.
11 All land, together with tide, submerged, or shoreland, to which the state holds title to or
12 to which the state may become entitled, may be obtained by permit or lease for the
13 purpose of exploration, development, and the extraction of minerals. Except as
14 specifically limited by AS 38.05.135 - 38.05.181, land may be withheld from lease
15 application on a first-come, first-served basis, and offered only on a competitive bid basis
16 when determined by the commissioner to be in the best interests of the state. **When**
17 **authorized by AS 27.30.030, the commissioner shall allow an exploration incentive**
18 **credit for activities undertaken to determine the existence, location, extent, or**
19 **quality of a locatable or leasable mineral or coal deposit and in** [IN] unproven areas
20 the commissioner may offer additional incentives, including a reduction of royalty to a
21 minimum of five percent in the case of oil and gas, and other terms in and granting
22 permit or lease for exploration and development whenever it appears to be in the best
23 interests of the state to do so.

24 * **Sec. 3.** AS 38.05.211(c) is amended to read:

25 (c) The rental for each year
26 **(1) is subject to the claim of the exploration incentive credit**
27 **authorized by AS 27.30; and**
28 **(2) after allowance of the credit claimed under (1) of this subsection,**
29 shall be credited against the production royalty under AS 38.05.212 as it accrues for that
30 year.

31 * **Sec. 4.** AS 38.05.212(b) is amended to read:

32 (b) The production royalty

1 (1) is three percent of net income as determined under AS 43.65; **and**
2 (2) **is subject to the exploration incentive credit authorized by**
3 **AS 27.30.**

4 * **Sec. 5.** AS 43.20 is amended by adding a new section to read:

5 Sec. 43.20.044. EXPLORATION INCENTIVE CREDIT. A taxpayer may apply
6 as a credit against the tax levied under this chapter the exploration incentive credit
7 authorized by AS 27.30.

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

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

20 * **Sec. 7.** This Act is retroactive to January 1, 1995, and applies to activities that qualify for
21 the exploration incentive credit authorized by AS 27.30 that are undertaken after December 31,
22 1994.

23 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).