

SENATE CS FOR CS FOR HOUSE BILL NO. 197(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/27/95
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 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 must be applied within 15 tax years or royalty payment periods after the
21 taking of the credit is approved under AS 27.30.020(2), but the tax years or royalty
22 payment periods in which the credit is applied need not be

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

26 (2) consecutive periods.

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

32 Sec. 27.30.070. RESPONSIBILITY FOR RECORD OF USE OF CREDIT. For

1 each mining operation, the commissioner may require each person who proposes to take
2 the credit under AS 27.30.020(2) to provide with the request to take the credit a record
3 of

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

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

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

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

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

18 Sec. 27.30.099. DEFINITIONS. In this chapter,

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

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

25 (A) includes

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

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

32 (iii) the cost of renting or leasing equipment from parties

1 not affiliated with the person requesting and taking the credit;

2 (iv) the reasonable costs of owning, maintaining, and
3 operating equipment;

4 (v) insurance and bond premiums associated with the
5 activities set out in (i) - (iv) of this subparagraph;

6 (vi) payments to consultants and independent contractors;
7 and

8 (vii) the general expense of operating the person's
9 business, including the costs of materials and supplies, if those expenses
10 and costs are directly attributable to the work described in
11 AS 27.30.010(a)(1) - (5);

12 (B) does not include return on investment, insurance or bond
13 premiums not covered under (A)(v) of this paragraph, or any other expense that
14 the person has not incurred to complete work described in AS 27.30.010(a)(1) -
15 (5);

16 (3) "exploration activity data" includes, as applicable,

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

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

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

23 (4) "geochemical methods" means soil, rock, water, air, vegetation, and
24 similar samples collected and their chemical analyses;

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

28 (6) "mining operation" includes all operating and nonoperating activities
29 related to a mineral deposit interest, and may be comprised of one or more mining
30 properties; in determining whether mining properties are part of the same mining
31 operation, the commissioner may consider whether the operation, in conducting mining
32 activities on several mining properties, uses common personnel, supply, and maintenance

1 facilities, mining-related treatment processes, storage facilities, roads, pipelines and
2 transportation equipment, and mining techniques and technology, and may also consider
3 the extent to which the mineral deposit interest comprises a common mining property;

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

5 * **Sec. 2.** AS 38.05.212(b) is amended to read:

6 (b) The production royalty

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

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

9 AS 27.30.

10 * **Sec. 3.** AS 43.20 is amended by adding a new section to read:

11 Sec. 43.20.044. EXPLORATION INCENTIVE CREDIT. (a) A taxpayer may
12 apply as a credit against the tax levied under this chapter the exploration incentive credit
13 authorized by AS 27.30.

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

18 * **Sec. 4.** AS 43.65.020(a) is amended to read:

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

- 1 * **Sec. 5.** This Act is retroactive to January 1, 1995, and applies to activities that qualify for
2 the exploration incentive credit authorized by AS 27.30 that are undertaken after May 15, 1995.
3 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).