

**SENATE CS FOR CS FOR HOUSE BILL NO. 207(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/6/95  
Referred: Finance

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 adjust  
4 [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION OF] royalty on  
5 individual leases, leases unitized as described in (p) of this section, leases subject to  
6 an agreement described in (s) or (t) of this section, or interests unitized under  
7 AS 31.05; the commissioner may act under this subsection to increase, decrease, or  
8 otherwise adjust the royalty

9 (A) after the effective date of this Act and not later than  
10 July 1, 2000, to allow for production from an oil or gas field or pool if

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

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

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

18 (B) to prolong the economic life of an oil or gas field or pool  
19 as costs per barrel or barrel equivalent increase such that future production  
20 would not otherwise be economically feasible; or

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

23 (2) [. THE COMMISSIONER] may not grant a [REDUCTION OF]  
24 royalty increase, decrease, or other adjustment unless the lessee or lessees requesting  
25 the increase, decrease, or other adjustment [REDUCTION] makes a clear and  
26 convincing showing that an increase, decrease, or other adjustment of royalty meets  
27 the requirements of this subsection and is in the best interests of the state;

28 (3) shall

29 (A) [THE REVENUE FROM THE LESSEE'S SHARE OF ALL  
30 HYDROCARBONS PRODUCED FROM THE FIELD IS AND IS LIKELY TO  
31 CONTINUE TO BE INSUFFICIENT TO PRODUCE A REASONABLE RATE  
32 OF RETURN WITH RESPECT TO THE LESSEE'S TOTAL INVESTMENT IN

1 THE FIELD. THE COMMISSIONER MAY] condition any [A] royalty  
2 increase, decrease, or other adjustment [REDUCTION] granted under this  
3 subsection in any way necessary to protect the state's best interests;

4 (B) describe, in the findings and determinations required by  
5 this subsection, the assumptions, including price, projected production rate  
6 or volume, predicted ultimate recovery, and development, operating, and  
7 transportation costs, upon which the increase, decrease, or other adjustment  
8 is based; and

9 (C) set out the terms and conditions, which may include  
10 substitution of a sliding scale royalty or other mechanisms, that will govern  
11 subsequent increases, decreases, or other adjustments to restore, increase, or  
12 decrease the state's royalty share if the assumptions upon which the  
13 commissioner relied are subsequently determined to have underestimated or  
14 overestimated the economic feasibility of the development of the field or pool  
15 without a royalty increase, decrease, or other adjustment;

16 (4) may not grant a royalty increase, decrease, or other adjustment  
17 for a field or pool

18 (A) under (1)(A) of this subsection if the royalty increase,  
19 decrease, or adjustment for the field or pool would establish a royalty rate  
20 of less than five percent in amount or value of the production removed or  
21 sold from a lease or leases covering the field or pool;

22 (B) under (1)(B) or (1)(C) of this subsection if the royalty  
23 decrease or other adjustment for the field or pool would establish a royalty  
24 rate of less than three percent in amount or value of the production removed  
25 or sold from a lease or leases covering the field or pool;

26 (5) may not grant a royalty increase, decrease, or other adjustment  
27 under this subsection without including an explicit condition that the royalty  
28 increase, decrease, or other adjustment is not assignable without the prior written  
29 approval of the commissioner; the commissioner's approval of an assignment must  
30 be based on a clear and convincing showing by the assignor that the assignment  
31 meets the requirements of (1) of this subsection and is in the best interests of the  
32 state;

1                   (6) shall require the lessee or lessees to submit, with the application  
2 for the royalty increase, decrease, or other adjustment, financial and technical data  
3 that demonstrate that the requirements of this subsection are met; the commissioner  
4 shall

5                   (A) require disclosure of the financial and technical data  
6 related to development, production, and transportation of oil and gas from  
7 the field or pool that are necessary to make a determination as to whether  
8 or not to grant the request for royalty increase, decrease, or other  
9 adjustment; and

10                  (B) keep the data described in (A) of this paragraph  
11 confidential under AS 38.05.035(a)(9) at the request of the lessee or lessees  
12 making application for the royalty increase or decrease or other royalty  
13 adjustment; the confidential data

14                  (i) at the direction of the majority of the members of  
15 the Legislative Budget and Audit Committee, may be disclosed by  
16 the commissioner only to the legislative auditor, the director of the  
17 division of legislative finance, and the permanent employees of their  
18 respective divisions, and to agents or contractors of the legislative  
19 auditor or the legislative finance division director who are engaged  
20 under contract to evaluate the royalty increase, decrease, or other  
21 royalty adjustment;

22                  (ii) may not be disclosed to legislators;

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

30                  (8) shall

31                  (A) make and publish a preliminary findings and  
32 determination on the royalty increase, decrease, or other adjustment

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

7 (B) for a royalty increase, decrease, or other adjustment  
8 under (1)(A) of this subsection, if the governor approves the preliminary  
9 findings and determination under (A) of this paragraph,

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

12 (ii) concurrently with the issuance of the public  
13 notice, if directed by the Legislative Budget and Audit Committee,  
14 make available copies of the commissioner's preliminary findings  
15 and determination on the royalty increase, decrease, or other  
16 adjustment application and the supporting financial and technical  
17 data, including the work papers, analyses, and recommendations of  
18 any contractors retained under (7) of this subsection, to persons  
19 authorized under (6)(B) of this subsection to 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 increase, decrease, or other adjustment  
24 under (1)(B) or (C) of this subsection, if the preliminary findings and  
25 determination approves a royalty increase, decrease, or other adjustment,

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

1 this subsection

2 (A) the projected effects of the proposed royalty increase,  
3 decrease, or other adjustment on the state's revenue;

4 (B) the likelihood that the proposed royalty increase, decrease,  
5 or other adjustment will result in incremental capital investment or other  
6 beneficial spending within the state, and the steps taken by the commissioner  
7 in conditioning the royalty increase, decrease, or other adjustment to assure  
8 that anticipated investments or other beneficial spending within the state  
9 occur;

10 (C) the projected effects of the proposed royalty increase,  
11 decrease, or other adjustment on the employment of Alaskans and the use  
12 of in-state contractors and suppliers; and

13 (D) the projected effects of the proposed royalty increase,  
14 decrease, or adjustment upon existing and potential new oil and gas  
15 exploration and development, and upon competition and patterns of  
16 investments related to oil and gas exploration and development;

17 (10) shall offer to appear before the Legislative Budget and Audit  
18 Committee on a day that is not earlier than 10 days and not later than 20 days  
19 after giving public notice under (8) of this subsection, to provide the committee  
20 a review of the commissioner's preliminary findings and determination on the  
21 royalty increase, decrease, or other adjustment application and the supporting  
22 financial and technical data; if the Legislative Budget and Audit Committee  
23 accepts the commissioner's offer, the committee shall give notice of the  
24 committee's meeting to all members of the legislature; if, under (6)(B) of this  
25 subsection, the financial and technical data must be kept confidential at the  
26 request of a lessee or lessees making application for the royalty increase or  
27 decrease or other royalty adjustment, the commissioner may appear before the  
28 committee in executive session;

29 (11) shall make copies of the preliminary findings and determination  
30 available to

31 (A) the presiding officer of each house [INTEREST,  
32 INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE

1 EVENT OF AN INCREASE IN THE PRICE OF OIL OR GAS. BEFORE  
2 APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL  
3 MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE  
4 MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE  
5 WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR  
6 THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS]  
7 of the legislature;

8 (B) the chairs of the legislature's standing committees on  
9 resources; and

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

12 (12) shall, within 30 days after the close of the public comment  
13 period under (8) of this subsection,

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

16 (B) except as to a final findings and determination proposed  
17 for a royalty increase, decrease, or other adjustment under (1)(A) of this  
18 subsection, make a final findings and determination, which is final and not  
19 appealable to the court by the lessee or lessees;

20 (C) as to a final findings and determination prepared for  
21 a royalty increase, decrease, or other adjustment under (1)(A) of this  
22 subsection, make a final findings and determination and present it to the  
23 governor for the governor's approval or disapproval; the governor may not  
24 delegate a decision to approve or disapprove a final findings and decision  
25 presented under this subparagraph; the commissioner's final findings and  
26 determination regarding a royalty increase, decrease, or other adjustment  
27 prepared under this subparagraph, if approved by the governor, is, as to  
28 the lessee or lessees applying for the royalty increase, decrease, or other  
29 adjustment, final and not appealable to the court;

30 (D) transmit a copy of the final findings and determination  
31 prepared under (B) or (C) of this paragraph to the lessee or lessees making  
32 application for the royalty increase, decrease, or other adjustment;

1 (E) with the consent of the lessee or lessees applying for the  
2 royalty increase, decrease, or other adjustment, amend the lease or  
3 unitization agreement of the lessee or lessees applying for the royalty  
4 increase, decrease, or other adjustment consistent with the commissioner's  
5 final findings and determination; and

6 (F) make copies of the final findings and determination  
7 available to each person who submitted comment under (8) of this subsection  
8 and who has filed a request for the copies;

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

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

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

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

29 (s) When separate tracts cannot be individually developed and operated in  
30 conformity with an established well-spacing or development program, a lease, or a  
31 portion of a lease, may be pooled with other land, whether or not owned by the state,  
32 under a communication or drilling agreement providing for an apportionment of

1 production or royalties among the separate tracts of land comprising the drilling or  
2 spacing unit when determined by the commissioner to be in the public interest.  
3 Operations or production under the agreement are considered as operations or production  
4 as to each lease committed to the agreement. **The commissioner may not decrease**  
5 **royalty on leases in connection with a communication or drilling agreement except**  
6 **as provided in (j) of this section.**

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

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

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