

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

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered: 5/11/95**

**Referred: Rules**

**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 modify  
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 modify the royalty

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

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

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

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

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

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

24 (3) shall

25 (A) [THE REVENUE FROM THE LESSEE'S SHARE OF ALL  
26 HYDROCARBONS PRODUCED FROM THE FIELD IS AND IS LIKELY TO  
27 CONTINUE TO BE INSUFFICIENT TO PRODUCE A REASONABLE RATE  
28 OF RETURN WITH RESPECT TO THE LESSEE'S TOTAL INVESTMENT IN  
29 THE FIELD. THE COMMISSIONER MAY] condition any [A] royalty  
30 modification [REDUCTION] granted under this subsection in any way necessary  
31 to protect the state's best interests;

32 (B) describe, in the findings and determinations required by

1 this subsection, the relevant factors, including price, projected production  
2 rate or volume, predicted ultimate recovery, and development, operating,  
3 and transportation costs, upon which the modification is based;

4 (C) for a modification under (1)(A) of this subsection, set out  
5 the terms and conditions, which

6 (i) must include a mechanism for adjusting royalty  
7 percentage based on price; the mechanism must provide for an  
8 increase in royalty percentage resulting from an increase in price  
9 from the base assumptions that, at a minimum, fully compensates  
10 for any decreases in royalty percentage resulting from a decrease  
11 in price from the base assumptions; it is the intent of this provision  
12 that the value of the potential percentage increases under the  
13 mechanism will, at a minimum, fully compensate for any negative  
14 risks the state assumed under the modification; and

15 (ii) may include, in addition to the royalty percentage  
16 adjustment based on price, which must meet the conditions  
17 specified in (i) of this subparagraph, a further adjustment based on  
18 production rate or volume from the field or pool; and

19 (D) for a modification under (1)(B) or (1)(C) of this  
20 subsection, set out the terms and conditions, which may include  
21 substitution of a sliding scale royalty or other mechanism to modify the  
22 royalty if there is a change in the relevant factors, such as price, projected  
23 production rate or volume, predicted ultimate recovery, and development,  
24 operating, and transportation costs, upon which the modification is based;

25 (4) may not grant a royalty modification for a field or pool

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

30 (B) under (1)(B) or (1)(C) of this subsection if the royalty  
31 modification for the field or pool would establish a royalty rate of less than  
32 three percent in amount or value of the production removed or sold from a

1           lease or leases covering the field or pool;

2           (5) may not grant a royalty modification under this subsection  
3 without including an explicit condition that the royalty modification is not  
4 assignable without the prior written approval of the commissioner; the  
5 commissioner shall, in the preliminary and final findings and determinations, set out  
6 the conditions under which the royalty modification may be assigned;

7           (6) shall require the lessee or lessees to submit, with the application  
8 for the royalty modification, financial and technical data that demonstrate that the  
9 requirements of this subsection are met; the commissioner shall

10           (A) require disclosure of the financial and technical data  
11 related to development, production, and transportation of oil and gas from  
12 the field or pool that are necessary to make a determination as to whether  
13 or not to grant the request for royalty modification; and

14           (B) keep the data described in (A) of this paragraph  
15 confidential under AS 38.05.035(a)(9) at the request of the lessee or lessees  
16 making application for the royalty modification; the confidential data shall  
17 be disclosed by the commissioner to legislators who sign an appropriate  
18 confidentiality agreement, to the legislative auditor, the director of the  
19 division of legislative finance, and the permanent employees of their  
20 respective divisions, and to agents or contractors of the legislative auditor or  
21 the legislative finance division director who are engaged under contract to  
22 evaluate the royalty modification;

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

29           (8) shall

30           (A) make and publish a preliminary findings and  
31 determination on the royalty modification application; if the preliminary  
32 findings and determination concerns a royalty modification under (1)(A)

1 of this subsection, the preliminary findings and determination shall also be  
2 presented to the governor for the governor's approval or disapproval; the  
3 governor may not delegate a determination to approve or disapprove a  
4 preliminary findings and determination under this subparagraph;

5 (B) for a royalty modification under (1)(A) of this  
6 subsection, if the governor approves the preliminary findings and  
7 determination under (A) of this paragraph,

8 (i) give reasonable public notice of the preliminary  
9 findings and determination;

10 (ii) concurrently with the issuance of the public  
11 notice, unless directed by the Legislative Budget and Audit  
12 Committee to do otherwise, make available copies of the  
13 commissioner's preliminary findings and determination on the  
14 royalty modification application and the supporting financial and  
15 technical data, including the work papers, analyses, and  
16 recommendations of any contractors retained under (7) of this  
17 subsection, to persons authorized under (6)(B) of this subsection to  
18 review the data; and

19 (iii) invite public comment on the preliminary  
20 findings and determination during a 30-day period for receipt of  
21 public comment;

22 (C) for a royalty modification under (1)(B) or (C) of this  
23 subsection, if the preliminary findings and determination approves a  
24 royalty modification,

25 (i) give reasonable public notice of the preliminary  
26 findings and determination; and

27 (ii) invite public comment on the preliminary findings  
28 and determination during a 30-day period for receipt of public  
29 comment;

30 (9) shall address in any findings and determinations required under  
31 this subsection the reasonably foreseeable effects of the proposed royalty

1 modification on the state's revenue;

2 (10) shall offer to appear before the Legislative Budget and Audit  
3 Committee to provide the committee a review of the commissioner's preliminary  
4 findings and determination on the royalty modification application and the  
5 supporting financial and technical data; if the Legislative Budget and Audit  
6 Committee accepts the commissioner's offer, the committee shall give notice of the  
7 committee's meeting to all members of the legislature; if, under (6)(B) of this  
8 subsection, the financial and technical data must be kept confidential at the  
9 request of a lessee or lessees making application for the royalty modification, the  
10 commissioner may appear before the committee in executive session;

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

13 (A) the presiding officer of each house [INTEREST,  
14 INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE  
15 EVENT OF AN INCREASE IN THE PRICE OF OIL OR GAS. BEFORE  
16 APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL  
17 MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE  
18 MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE  
19 WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR  
20 THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS]  
21 of the legislature;

22 (B) the chairs of the legislature's standing committees on  
23 resources; and

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

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

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

30 (B) make a final findings and determination and present it  
31 to the governor for the governor's approval or disapproval; the governor  
32 may not delegate a decision to approve or disapprove a final findings and

1 determination presented under this subparagraph; the commissioner's final  
2 findings and determination regarding a royalty modification, if approved  
3 by the governor, is, as to the lessee or lessees applying for the royalty  
4 modification, final and not appealable to the court;

5 (C) transmit a copy of the final findings and determination  
6 prepared under (B) of this paragraph to the lessee or lessees making  
7 application for the royalty modification;

8 (D) with the consent of the lessee or lessees applying for the  
9 royalty modification, amend the lease or unitization agreement of the lessee  
10 or lessees applying for the royalty modification consistent with the  
11 commissioner's approved final findings and determination; and

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

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

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

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

1 protect all parties in interest, including the state.

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

3 (s) When separate tracts cannot be individually developed and operated in  
4 conformity with an established well-spacing or development program, a lease, or a  
5 portion of a lease, may be pooled with other land, whether or not owned by the state,  
6 under a communication or drilling agreement providing for an apportionment of  
7 production or royalties among the separate tracts of land comprising the drilling or  
8 spacing unit when determined by the commissioner to be in the public interest.  
9 Operations or production under the agreement are considered as operations or production  
10 as to each lease committed to the agreement. **The commissioner may not decrease**  
11 **royalty on leases in connection with a communication or drilling agreement except**  
12 **as provided in (j) of this section.**

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

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

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