

HOUSE BILL NO. 28

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KOHRING AND ROKEBERG

Introduced: 1/21/03

Referred: House Special Committee on Oil and Gas, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to adjustments to royalty reserved to the state to encourage otherwise**
2 **uneconomic production of oil and gas; and providing for an effective date."**

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

4 *** Section 1.** AS 38.05.180(j) is amended to read:

5 (j) The commissioner

6 (1) may provide for **modification of** [AN INCREASE OR
7 DECREASE OR OTHERWISE MODIFY] royalty [, TO ALLOW FOR
8 PRODUCTION THAT WOULD NOT OTHERWISE BE ECONOMICALLY
9 FEASIBLE,] on individual leases, leases unitized as described in (p) of this section,
10 leases subject to an agreement described in (s) or (t) of this section, or interests
11 unitized under AS 31.05 [; THE COMMISSIONER MAY ACT UNDER THIS
12 SUBSECTION TO MODIFY THE ROYALTY]

13 (A) [AFTER JUNE 20, 1995 AND NOT LATER THAN
14 JULY 1, 2015, SO LONG AS THE AUTHORITY TO MODIFY ROYALTY

1 UNDER THIS SUBPARAGRAPH HAS BEEN AUTHORIZED OR
 2 REAUTHORIZED BY LAW WITHIN THE TEN YEARS PRECEDING THE
 3 COMMISSIONER'S ACTION TO MODIFY THE ROYALTY,] to allow for
 4 production from an oil or gas field, [OR] pool, **or portion of a field or pool** if

5 (i) the oil or gas field, [OR] pool, **or portion of the**
 6 **field or pool** has been **sufficiently** delineated [SUFFICIENTLY] to **the**
 7 **satisfaction of** [ALLOW] the commissioner [TO CONDUCT THE
 8 ANALYSES AND MAKE THE FINDINGS REQUIRED BY THIS
 9 SUBSECTION]; [AND]

10 (ii) the field, [OR] pool, **or portion of a field or pool**
 11 has not previously produced oil or gas for sale; **and**

12 **(iii) oil or gas production from the field, pool, or**
 13 **portion of the field or pool would not otherwise be economically**
 14 **feasible;**

15 (B) to prolong the economic life of an oil or gas field, [OR]
 16 pool, **or portion of a field or pool** as **per barrel or barrel equivalent** costs
 17 [PER BARREL OR BARREL EQUIVALENT] increase **or as the price of oil**
 18 **or gas decreases, and the increase or decrease is sufficient to make future**
 19 **production no longer economically feasible;** or

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

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

26 (3) shall

27 [(A)] condition any royalty modification granted under this
 28 subsection in any way necessary to protect the state's best interests; **the**
 29 **commissioner shall provide for an increase or decrease or other**
 30 **modification of the state's royalty share by a sliding scale royalty or other**
 31 **mechanism that shall be based on a change in the price of oil or gas and**

1 may also be based on other relevant factors such as a change in
 2 production rate, projected ultimate recovery, development costs, and
 3 operating costs

4 [(B) DESCRIBE, IN THE FINDINGS AND
 5 DETERMINATIONS REQUIRED BY THIS SUBSECTION, THE
 6 RELEVANT FACTORS, INCLUDING PRICE, PROJECTED
 7 PRODUCTION RATE OR VOLUME, PREDICTED ULTIMATE
 8 RECOVERY, AND DEVELOPMENT, OPERATING, AND
 9 TRANSPORTATION COSTS, UPON WHICH THE MODIFICATION IS
 10 BASED;

11 (C) FOR A MODIFICATION UNDER (1)(A) OF THIS
 12 SUBSECTION, SET OUT THE TERMS AND CONDITIONS, WHICH

13 (i) MUST INCLUDE A MECHANISM FOR
 14 ADJUSTING ROYALTY PERCENTAGE BASED ON PRICE;
 15 USING FORECASTS OF THE RANGE OF FUTURE PRICES AND
 16 THEIR PROBABILITIES, THE MECHANISM MUST PROVIDE
 17 THAT THE VALUE OF THE POTENTIAL REVENUE INCREASES
 18 RESULTING FROM ROYALTY PERCENTAGE INCREASES
 19 MUST EXCEED THE VALUE OF THE POTENTIAL REVENUE
 20 LOSSES RESULTING FROM ROYALTY PERCENTAGE
 21 DECREASES; AND

22 (ii) MAY INCLUDE, IN ADDITION TO THE
 23 ROYALTY PERCENTAGE ADJUSTMENT BASED ON PRICE,
 24 WHICH MUST MEET THE CONDITIONS SPECIFIED IN (i) OF
 25 THIS SUBPARAGRAPH, A FURTHER ADJUSTMENT BASED ON
 26 PRODUCTION RATE OR VOLUME FROM THE FIELD OR POOL;
 27 AND

28 (D) FOR A MODIFICATION UNDER (1)(B) OR (1)(C) OF
 29 THIS SUBSECTION, SET OUT THE TERMS AND CONDITIONS, WHICH
 30 MAY INCLUDE SUBSTITUTION OF A SLIDING SCALE ROYALTY OR
 31 OTHER MECHANISM TO MODIFY THE ROYALTY IF THERE IS A

1 CHANGE IN THE RELEVANT FACTORS, SUCH AS PRICE, PROJECTED
 2 PRODUCTION RATE OR VOLUME, PREDICTED ULTIMATE
 3 RECOVERY, AND DEVELOPMENT, OPERATING, AND
 4 TRANSPORTATION COSTS, UPON WHICH THE MODIFICATION IS
 5 BASED];

6 (4) may not grant a royalty **reduction** [MODIFICATION] for a field,
 7 [OR] pool, **or portion of a field or pool**

8 (A) under (1)(A) of this subsection **that exceeds 75 percent of**
 9 **the royalty originally specified in a lease entered into under the provisions**
 10 **of (f) of this section or AS 38.05.134** [IF THE ROYALTY MODIFICATION
 11 FOR THE FIELD OR POOL WOULD ESTABLISH A ROYALTY RATE OF
 12 LESS THAN FIVE PERCENT IN AMOUNT OR VALUE OF THE
 13 PRODUCTION REMOVED OR SOLD FROM A LEASE OR LEASES
 14 COVERING THE FIELD OR POOL];

15 (B) under (1)(B) or (1)(C) of this subsection **that exceeds 90**
 16 **percent of the royalty originally specified in a lease entered into under the**
 17 **provisions of (f) of this section or AS 38.05.134** [IF THE ROYALTY
 18 MODIFICATION FOR THE FIELD OR POOL WOULD ESTABLISH A
 19 ROYALTY RATE OF LESS THAN THREE PERCENT IN AMOUNT OR
 20 VALUE OF THE PRODUCTION REMOVED OR SOLD FROM A LEASE
 21 OR LEASES COVERING THE FIELD OR POOL];

22 (5) [MAY NOT GRANT A ROYALTY MODIFICATION UNDER
 23 THIS SUBSECTION WITHOUT INCLUDING AN EXPLICIT CONDITION THAT
 24 THE ROYALTY MODIFICATION IS NOT ASSIGNABLE WITHOUT THE PRIOR
 25 WRITTEN APPROVAL OF THE COMMISSIONER; THE COMMISSIONER
 26 SHALL, IN THE PRELIMINARY AND FINAL FINDINGS AND
 27 DETERMINATIONS, SET OUT THE CONDITIONS UNDER WHICH THE
 28 ROYALTY MODIFICATION MAY BE ASSIGNED;

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

1 [SHALL]

2 (A) **may** require disclosure of **only** the financial and technical
 3 data related to [DEVELOPMENT,] production [, AND TRANSPORTATION
 4 OF OIL AND GAS FROM THE FIELD OR POOL] that are **reasonably**
 5 **available to the applicant** [NECESSARY TO MAKE A DETERMINATION
 6 AS TO WHETHER OR NOT TO GRANT THE REQUEST FOR ROYALTY
 7 MODIFICATION]; and

8 (B) **shall** keep the data [DESCRIBED IN (A) OF THIS
 9 PARAGRAPH] confidential under AS 38.05.035(a)(9) at the request of the
 10 lessee or lessees making application for the royalty **reduction**
 11 [MODIFICATION; THE CONFIDENTIAL DATA MAY BE DISCLOSED
 12 BY THE COMMISSIONER TO LEGISLATORS AND TO THE
 13 LEGISLATIVE AUDITOR AND AS DIRECTED BY THE CHAIR OR
 14 VICE-CHAIR OF THE LEGISLATIVE BUDGET AND AUDIT
 15 COMMITTEE TO THE DIRECTOR OF THE DIVISION OF LEGISLATIVE
 16 FINANCE, THE PERMANENT EMPLOYEES OF THEIR RESPECTIVE
 17 DIVISIONS WHO ARE RESPONSIBLE FOR EVALUATING A ROYALTY
 18 MODIFICATION, AND TO AGENTS OR CONTRACTORS OF THE
 19 LEGISLATIVE AUDITOR OR THE LEGISLATIVE FINANCE DIRECTOR
 20 WHO ARE ENGAGED UNDER CONTRACT TO EVALUATE THE
 21 ROYALTY MODIFICATION, IF THEY SIGN AN APPROPRIATE
 22 CONFIDENTIALITY AGREEMENT];

23 **(6)** [(7)] may require the lessee or lessees making application for the
 24 royalty **reduction** [MODIFICATION] to **retain and** pay for the services of **a** [AN
 25 INDEPENDENT] contractor, **selected by the lessee or lessees from a list of** qualified
 26 **consultants in** [TO EVALUATE] hydrocarbon [DEVELOPMENT,] production [,
 27 TRANSPORTATION,] and economics **provided by the commissioner**, [WHO IS
 28 SELECTED BY THE COMMISSIONER] to assist the commissioner in evaluating the
 29 application and financial and technical data; **when the commissioner requires the**
 30 **lessee or lessees to retain the services of a contractor, the commissioner shall**
 31 **determine the relevant scope of the work to be performed by the contractor**

1 [SELECTION OF AN INDEPENDENT CONTRACTOR UNDER THIS
2 PARAGRAPH IS NOT SUBJECT TO AS 36.30];

3 ~~(7)~~ [(8)] shall

4 [(A)] make and publish a preliminary findings and
5 determination on the royalty **reduction** [MODIFICATION] application, [;IF
6 THE PRELIMINARY FINDINGS AND DETERMINATION CONCERNS A
7 ROYALTY MODIFICATION UNDER (1)(A) OF THIS SUBSECTION, THE
8 PRELIMINARY FINDINGS AND DETERMINATION SHALL ALSO BE
9 PRESENTED TO THE GOVERNOR FOR THE GOVERNOR'S APPROVAL
10 OR DISAPPROVAL; THE GOVERNOR MAY NOT DELEGATE A
11 DETERMINATION TO APPROVE OR DISAPPROVE A PRELIMINARY
12 FINDINGS AND DETERMINATION UNDER THIS SUBPARAGRAPH;

13 (B) FOR A ROYALTY MODIFICATION UNDER (1)(A) OF
14 THIS SUBSECTION, IF THE GOVERNOR APPROVES THE
15 PRELIMINARY FINDINGS AND DETERMINATION UNDER (A) OF
16 THIS PARAGRAPH,

17 (i)] give reasonable public notice of the preliminary
18 findings and determination, [;

19 (ii) CONCURRENTLY WITH THE ISSUANCE OF
20 THE PUBLIC NOTICE, UNLESS DIRECTED BY THE
21 LEGISLATIVE BUDGET AND AUDIT COMMITTEE TO DO
22 OTHERWISE, MAKE AVAILABLE COPIES OF THE
23 COMMISSIONER'S PRELIMINARY FINDINGS AND
24 DETERMINATION ON THE ROYALTY MODIFICATION
25 APPLICATION AND THE SUPPORTING FINANCIAL AND
26 TECHNICAL DATA, INCLUDING THE WORK PAPERS,
27 ANALYSES, AND RECOMMENDATIONS OF ANY
28 CONTRACTORS RETAINED UNDER (7) OF THIS SUBSECTION,
29 TO PERSONS AUTHORIZED UNDER (6)(B) OF THIS
30 SUBSECTION TO REVIEW THE DATA;] and

31 [(iii)] invite public comment on the preliminary findings

1 and determination during a 30-day period for receipt of public
2 comment;

3 [(C) FOR A ROYALTY MODIFICATION UNDER (1)(B) OR
4 (C) OF THIS SUBSECTION, IF THE PRELIMINARY FINDINGS AND
5 DETERMINATION APPROVES A ROYALTY MODIFICATION,

6 (i) GIVE REASONABLE PUBLIC NOTICE OF THE
7 PRELIMINARY FINDINGS AND DETERMINATION; AND

8 (ii) INVITE PUBLIC COMMENT ON THE
9 PRELIMINARY FINDINGS AND DETERMINATION DURING A
10 30-DAY PERIOD FOR RECEIPT OF PUBLIC COMMENT;

11 (9) SHALL ADDRESS IN ANY FINDINGS AND
12 DETERMINATIONS REQUIRED UNDER THIS SUBSECTION THE
13 REASONABLY FORESEEABLE EFFECTS OF THE PROPOSED ROYALTY
14 MODIFICATION ON THE STATE'S REVENUE;]

15 **(8)** [(10)] shall offer to appear before the Legislative Budget and Audit
16 Committee **on a day that is not earlier than 10 days and not later than 20 days**
17 **after giving public notice under (7) of this subsection,** to provide the committee a
18 review of the commissioner's preliminary findings and determination on the royalty
19 **reduction** [MODIFICATION] application and **administrative process** [THE
20 SUPPORTING FINANCIAL AND TECHNICAL DATA]; if the Legislative Budget
21 and Audit Committee accepts the commissioner's offer, the committee shall give
22 notice of the committee's meeting to all members of the legislature; [IF, UNDER
23 (6)(B) OF THIS SUBSECTION, THE FINANCIAL AND TECHNICAL DATA
24 MUST BE KEPT CONFIDENTIAL AT THE REQUEST OF A LESSEE OR
25 LESSEES MAKING APPLICATION FOR THE ROYALTY MODIFICATION, THE
26 COMMISSIONER MAY APPEAR BEFORE THE COMMITTEE IN EXECUTIVE
27 SESSION;]

28 **(9)** [(11)] shall make copies of the preliminary findings and
29 determination available to

30 (A) the presiding officer of each house of the legislature;

31 (B) the chairs of the legislature's standing committees on

1 resources; and

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

4 **(10)** [(12)] shall, within 30 days after the close of the public comment
5 period under **(7)** [(8)] of this subsection,

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

8 (B) make a final findings and determination [AND PRESENT
9 IT TO THE GOVERNOR FOR THE GOVERNOR'S APPROVAL OR
10 DISAPPROVAL; THE GOVERNOR MAY NOT DELEGATE A DECISION
11 TO APPROVE OR DISAPPROVE A FINAL FINDINGS AND
12 DETERMINATION PRESENTED UNDER THIS SUBPARAGRAPH]; the
13 commissioner's final findings and determination **prepared under this**
14 **subparagraph** regarding a royalty **reduction** [MODIFICATION, IF
15 APPROVED BY THE GOVERNOR,] is final and not appealable to the court;

16 (C) transmit a copy of the final findings and determination
17 [PREPARED UNDER (B) OF THIS PARAGRAPH] to the lessee [OR
18 LESSEES MAKING APPLICATION FOR THE ROYALTY
19 MODIFICATION];

20 (D) with the **applicant's** consent [OF THE LESSEE OR
21 LESSEES APPLYING FOR THE ROYALTY MODIFICATION], amend the
22 **applicant's** lease or unitization agreement [OF THE LESSEE OR LESSEES
23 APPLYING FOR THE ROYALTY MODIFICATION] consistent with the
24 commissioner's [APPROVED] final **decision** [FINDINGS AND
25 DETERMINATION]; and

26 (E) make copies of the final findings and determination
27 available to each person who submitted comment under **(7)** [(8)] of this
28 subsection and who has filed a request for the copies;

29 **(11)** [(13)] is not limited by the provisions of AS 38.05.134(3) or (f) of
30 this section in the commissioner's determination under this subsection.

31 * **Sec. 2.** AS 38.05.180(p) is amended to read:

1 (p) To conserve the natural resources of all or a part of an oil or gas pool,
 2 field, or like area, the lessees and their representatives may unite with each other, or
 3 jointly or separately with others, in collectively adopting or operating under a
 4 cooperative or a unit plan of development or operation of the pool, field, or like area,
 5 or a part of it, when determined and certified by the commissioner to be necessary or
 6 advisable in the public interest. The commissioner may, with the consent of the
 7 holders of leases involved, establish, change, or revoke drilling, producing, and
 8 royalty requirements of the leases and adopt regulations with reference to the leases,
 9 with like consent on the part of the lessees, in connection with the institution and
 10 operation of a cooperative or unit plan as the commissioner determines necessary or
 11 proper to secure the proper protection of the public interest. The commissioner may
 12 not **reduce** [DECREASE] royalty on leases in connection with a cooperative or unit
 13 plan except as provided in (j) of this section. The commissioner may require oil and
 14 gas leases issued under this section to contain a provision requiring the lessee to
 15 operate under a reasonable cooperative or unit plan, and may prescribe a plan under
 16 which the lessee must operate. The plan must adequately protect all parties in interest,
 17 including the state.

18 * **Sec. 3.** AS 38.05.180(s) is amended to read:

19 (s) When separate tracts cannot be individually developed and operated in
 20 conformity with an established well-spacing or development program, a lease, or a
 21 portion of a lease, may be pooled with other land, whether or not owned by the state,
 22 under a communitization or drilling agreement providing for an apportionment of
 23 production or royalties among the separate tracts of land comprising the drilling or
 24 spacing unit when determined by the commissioner to be in the public interest.
 25 Operations or production under the agreement are considered as operations or
 26 production as to each lease committed to the agreement. The commissioner may not
 27 **reduce** [DECREASE] royalty on leases in connection with a communitization or
 28 drilling agreement except as provided in (j) of this section.

29 * **Sec. 4.** AS 38.05.180(t) is amended to read:

30 (t) The commissioner may prescribe conditions and approve, on conditions,
 31 drilling, or development contracts made by one or more lessees of oil or gas leases,

1 with one or more persons, when, in the discretion of the commissioner, the
2 conservation of natural resources or the public convenience or necessity requires it or
3 the interests of the state are best served. All leases operated under approved drilling or
4 development contracts and interests under them, are excepted in determining holding
5 or control under AS 38.05.140. The commissioner may not reduce [DECREASE]
6 royalty on a lease or leases that are subject to a drilling or development contract except
7 as provided in (j) of this section.

8 * **Sec. 5.** AS 36.30.850(b)(33) is repealed.

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