

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 28
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KOHRING AND ROKEBERG

Introduced: 2/19/03

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 field or
 6 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, has
 11 not previously produced oil or gas for sale; and

12 (iii) oil or gas production from the field or 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 pool,
 16 or portion of a field or pool, as per barrel or barrel equivalent costs [PER
 17 BARREL OR BARREL EQUIVALENT] increase or as the price of oil or
 18 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 provide for an increase or decrease or other modification
 27 of the state's royalty share by a sliding scale royalty or other mechanism that
 28 shall be based on a change in the price of oil or gas and may also be based on
 29 other relevant factors such as a change in production rate, projected ultimate
 30 recovery, development costs, and operating costs

31 [(A) CONDITION ANY ROYALTY MODIFICATION

1 GRANTED UNDER THIS SUBSECTION IN ANY WAY NECESSARY TO
2 PROTECT THE STATE'S BEST INTERESTS;

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

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

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

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

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

1 PRODUCTION RATE OR VOLUME, PREDICTED ULTIMATE
 2 RECOVERY, AND DEVELOPMENT, OPERATING, AND
 3 TRANSPORTATION COSTS, UPON WHICH THE MODIFICATION IS
 4 BASED];

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

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

11 (B) under (1)(B) or (1)(C) of this subsection if the royalty
 12 modification for the field or pool would establish a royalty rate of less than
 13 three percent in amount or value of the production removed or sold from a
 14 lease or leases covering the field or pool;

15 (5) [MAY NOT GRANT A ROYALTY MODIFICATION UNDER
 16 THIS SUBSECTION WITHOUT INCLUDING AN EXPLICIT CONDITION THAT
 17 THE ROYALTY MODIFICATION IS NOT ASSIGNABLE WITHOUT THE PRIOR
 18 WRITTEN APPROVAL OF THE COMMISSIONER; THE COMMISSIONER
 19 SHALL, IN THE PRELIMINARY AND FINAL FINDINGS AND
 20 DETERMINATIONS, SET OUT THE CONDITIONS UNDER WHICH THE
 21 ROYALTY MODIFICATION MAY BE ASSIGNED;

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

26 (A) **may** require disclosure of **only** the financial and technical
 27 data related to development, production, and transportation of oil and gas from
 28 the field or pool that are **reasonably available to the applicant**
 29 [NECESSARY TO MAKE A DETERMINATION AS TO WHETHER OR
 30 NOT TO GRANT THE REQUEST FOR ROYALTY MODIFICATION]; and

31 (B) **shall** keep the data [DESCRIBED IN (A) OF THIS

1 PARAGRAPH] confidential under AS 38.05.035(a)(9) at the request of the
 2 lessee or lessees making application for the royalty **reduction**
 3 [MODIFICATION; THE CONFIDENTIAL DATA MAY BE DISCLOSED
 4 BY THE COMMISSIONER TO LEGISLATORS AND TO THE
 5 LEGISLATIVE AUDITOR AND AS DIRECTED BY THE CHAIR OR
 6 VICE-CHAIR OF THE LEGISLATIVE BUDGET AND AUDIT
 7 COMMITTEE TO THE DIRECTOR OF THE DIVISION OF LEGISLATIVE
 8 FINANCE, THE PERMANENT EMPLOYEES OF THEIR RESPECTIVE
 9 DIVISIONS WHO ARE RESPONSIBLE FOR EVALUATING A ROYALTY
 10 MODIFICATION, AND TO AGENTS OR CONTRACTORS OF THE
 11 LEGISLATIVE AUDITOR OR THE LEGISLATIVE FINANCE DIRECTOR
 12 WHO ARE ENGAGED UNDER CONTRACT TO EVALUATE THE
 13 ROYALTY MODIFICATION, IF THEY SIGN AN APPROPRIATE
 14 CONFIDENTIALITY AGREEMENT];

15 **(6)** [(7)] may require the lessee or lessees making application for the
 16 royalty **reduction** [MODIFICATION] to pay for the services of an independent
 17 contractor, **selected from a list of** qualified **consultants** to evaluate hydrocarbon
 18 development, production, transportation, and economics [,WHO IS SELECTED] by
 19 the commissioner to assist the commissioner in evaluating the application and
 20 financial and technical data; **the commissioner shall determine the relevant scope of**
 21 **the work to be performed by the contractor** [SELECTION OF AN
 22 INDEPENDENT CONTRACTOR UNDER THIS PARAGRAPH IS NOT SUBJECT
 23 TO AS 36.30];

24 **(7)** [(8)] shall

25 [(A)] make and publish a preliminary findings and
 26 determination on the royalty **reduction** [MODIFICATION] application, [, IF
 27 THE PRELIMINARY FINDINGS AND DETERMINATION CONCERNS A
 28 ROYALTY MODIFICATION UNDER (1)(A) OF THIS SUBSECTION, THE
 29 PRELIMINARY FINDINGS AND DETERMINATION SHALL ALSO BE
 30 PRESENTED TO THE GOVERNOR FOR THE GOVERNOR'S APPROVAL
 31 OR DISAPPROVAL; THE GOVERNOR MAY NOT DELEGATE A

1 DETERMINATION TO APPROVE OR DISAPPROVE A PRELIMINARY
2 FINDINGS AND DETERMINATION UNDER THIS SUBPARAGRAPH;

3 (B) FOR A ROYALTY MODIFICATION UNDER (1)(A) OF
4 THIS SUBSECTION, IF THE GOVERNOR APPROVES THE
5 PRELIMINARY FINDINGS AND DETERMINATION UNDER (A) OF
6 THIS PARAGRAPH,

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

9 (ii) CONCURRENTLY WITH THE ISSUANCE OF
10 THE PUBLIC NOTICE, UNLESS DIRECTED BY THE
11 LEGISLATIVE BUDGET AND AUDIT COMMITTEE TO DO
12 OTHERWISE, MAKE AVAILABLE COPIES OF THE
13 COMMISSIONER'S PRELIMINARY FINDINGS AND
14 DETERMINATION ON THE ROYALTY MODIFICATION
15 APPLICATION AND THE SUPPORTING FINANCIAL AND
16 TECHNICAL DATA, INCLUDING THE WORK PAPERS,
17 ANALYSES, AND RECOMMENDATIONS OF ANY
18 CONTRACTORS RETAINED UNDER (7) OF THIS SUBSECTION,
19 TO PERSONS AUTHORIZED UNDER (6)(B) OF THIS
20 SUBSECTION TO REVIEW THE DATA;] and

21 [(iii)] invite public comment on the preliminary findings
22 and determination during a 30-day period for receipt of public
23 comment;

24 [(C) FOR A ROYALTY MODIFICATION UNDER (1)(B) OR
25 (C) OF THIS SUBSECTION, IF THE PRELIMINARY FINDINGS AND
26 DETERMINATION APPROVES A ROYALTY MODIFICATION,

27 (i) GIVE REASONABLE PUBLIC NOTICE OF THE
28 PRELIMINARY FINDINGS AND DETERMINATION; AND

29 (ii) INVITE PUBLIC COMMENT ON THE
30 PRELIMINARY FINDINGS AND DETERMINATION DURING A
31 30-DAY PERIOD FOR RECEIPT OF PUBLIC COMMENT;

1 (9) SHALL ADDRESS IN ANY FINDINGS AND
 2 DETERMINATIONS REQUIRED UNDER THIS SUBSECTION THE
 3 REASONABLY FORESEEABLE EFFECTS OF THE PROPOSED ROYALTY
 4 MODIFICATION ON THE STATE'S REVENUE;]

5 **(8)** [(10)] shall offer to appear before the Legislative Budget and Audit
 6 Committee **on a day that is not earlier than 10 days and not later than 20 days**
 7 **after giving public notice under (7) of this subsection,** to provide the committee a
 8 review of the commissioner's preliminary findings and determination on the royalty
 9 **reduction** [MODIFICATION] application and **administrative process** [THE
 10 SUPPORTING FINANCIAL AND TECHNICAL DATA]; if the Legislative Budget
 11 and Audit Committee accepts the commissioner's offer, the committee shall give
 12 notice of the committee's meeting to all members of the legislature; [IF, UNDER
 13 (6)(B) OF THIS SUBSECTION, THE FINANCIAL AND TECHNICAL DATA
 14 MUST BE KEPT CONFIDENTIAL AT THE REQUEST OF A LESSEE OR
 15 LESSEES MAKING APPLICATION FOR THE ROYALTY MODIFICATION, THE
 16 COMMISSIONER MAY APPEAR BEFORE THE COMMITTEE IN EXECUTIVE
 17 SESSION;]

18 **(9)** [(11)] shall make copies of the preliminary findings and
 19 determination available to

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

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

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

25 **(10)** [(12)] shall, within 30 days after the close of the public comment
 26 period under **(7)** [(8)] of this subsection,

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

29 (B) make a final findings and determination [AND PRESENT
 30 IT TO THE GOVERNOR FOR THE GOVERNOR'S APPROVAL OR
 31 DISAPPROVAL; THE GOVERNOR MAY NOT DELEGATE A DECISION

1 TO APPROVE OR DISAPPROVE A FINAL FINDINGS AND
 2 DETERMINATION PRESENTED UNDER THIS SUBPARAGRAPH]; the
 3 commissioner's final findings and determination **prepared under this**
 4 **subparagraph** regarding a royalty **reduction** [MODIFICATION, IF
 5 APPROVED BY THE GOVERNOR,] is final and not appealable to the court;

6 (C) transmit a copy of the final findings and determination
 7 [PREPARED UNDER (B) OF THIS PARAGRAPH] to the lessee [OR
 8 LESSEES MAKING APPLICATION FOR THE ROYALTY
 9 MODIFICATION];

10 (D) with the **applicant's** consent [OF THE LESSEE OR
 11 LESSEES APPLYING FOR THE ROYALTY MODIFICATION], amend the
 12 **applicant's** lease or unitization agreement [OF THE LESSEE OR LESSEES
 13 APPLYING FOR THE ROYALTY MODIFICATION] consistent with the
 14 commissioner's [APPROVED] final **decision** [FINDINGS AND
 15 DETERMINATION]; and

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

19 **(11)** [(13)] is not limited by the provisions of AS 38.05.134(3) or (f) of
 20 this section in the commissioner's determination under this subsection.

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

22 (p) To conserve the natural resources of all or a part of an oil or gas pool,
 23 field, or like area, the lessees and their representatives may unite with each other, or
 24 jointly or separately with others, in collectively adopting or operating under a
 25 cooperative or a unit plan of development or operation of the pool, field, or like area,
 26 or a part of it, when determined and certified by the commissioner to be necessary or
 27 advisable in the public interest. The commissioner may, with the consent of the
 28 holders of leases involved, establish, change, or revoke drilling, producing, and
 29 royalty requirements of the leases and adopt regulations with reference to the leases,
 30 with like consent on the part of the lessees, in connection with the institution and
 31 operation of a cooperative or unit plan as the commissioner determines necessary or

1 proper to secure the proper protection of the public interest. The commissioner may
 2 not **reduce** [DECREASE] royalty on leases in connection with a cooperative or unit
 3 plan except as provided in (j) of this section. The commissioner may require oil and
 4 gas leases issued under this section to contain a provision requiring the lessee to
 5 operate under a reasonable cooperative or unit plan, and may prescribe a plan under
 6 which the lessee must operate. The plan must adequately protect all parties in interest,
 7 including the state.

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

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

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

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

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

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