

HOUSE BILL NO. 40

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE SEATON

Introduced: 1/20/09

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mining licenses, to the mining license tax, and to production
2 royalties on minerals and rents for property involved in mining; and providing for an
3 effective date."

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

5 * **Section 1.** AS 38.05.150(d) is amended to read:

6 (d) For the privilege of mining or extracting the coal in the land covered by
7 the lease, the lessee **shall pay to the state**

8 (1) [SHALL PAY TO THE STATE] the royalties specified in the
9 lease; the royalties shall be fixed before offering the lease, and shall be effective for a
10 period of not more than **10** [20] years; the royalties shall be **based on the adjusted**
11 **gross value of coal from the leased area that is sold, disposed, transferred, or**
12 **consumed by the lessee at a rate not less than**

13 **(A) five percent for a noncompetitive lease or for a**
14 **competitive lease in which royalty is a bid variable; or**

1 **(B) five percent nor more than 12 percent for a competitive**
 2 **lease in which royalty is not a bid variable; and** [NOT LESS THAN FIVE
 3 CENTS A TON OF 2,000 POUNDS; THE ROYALTY PAYMENT IS
 4 SUBJECT TO THE EXPLORATION INCENTIVE CREDIT AUTHORIZED
 5 BY AS 27.30;]

6 (2) [SHALL ALSO PAY] an annual rental, payable at the date of the
 7 lease and annually thereafter, on the land or coal deposits covered by the lease, at a
 8 rate fixed by the commissioner before offering the lease; [THE ANNUAL RENTAL
 9 SHALL BE EFFECTIVE FOR A PERIOD OF NOT MORE THAN 20 YEARS;] the
 10 annual rental shall be not less than **three dollars for each acre** [25 CENTS AN
 11 ACRE FOR THE FIRST YEAR OF THE LEASE, NOT LESS THAN 50 CENTS AN
 12 ACRE FOR THE SECOND YEAR, THIRD YEAR, FOURTH YEAR AND FIFTH
 13 YEAR, AND NOT LESS THAN \$1 AN ACRE FOR EACH YEAR THEREAFTER
 14 DURING THE CONTINUANCE OF THE LEASE]; the rental for each year shall be
 15 credited against the royalties as they accrue for that year; each lease shall provide that
 16 the annual rental payment is subject to adjustment at intervals of **not** [NO] more than
 17 **10** [20] years [AND ADJUSTMENTS SHALL BE BASED ON THE CURRENT
 18 RATES FOR PROPERTIES SIMILARLY SITUATED].

19 * **Sec. 2.** AS 38.05.150 is amended by adding new subsections to read:

20 (g) Notwithstanding the requirement in (d)(1) of this section, the
 21 commissioner may require the lessee to pay royalty-in-kind rather than value as
 22 necessary to fuel a coal-fired power plant owned by the state or an agency of the state.

23 (h) If the commissioner establishes an amount to be paid as rent by a
 24 regulation adopted under this section, at least every 10 years, the commissioner shall
 25 calculate a change in the rental amount based on the change in the Consumer Price
 26 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)
 27 compiled by the Bureau of Labor Statistics, United States Department of Labor, as
 28 revised, rebased, or replaced by that bureau; the reference base index is the index for
 29 January - June 2005, as revised or rebased by that bureau and adopt a regulation
 30 establishing a new rental amount based on the calculation.

31 * **Sec. 3.** AS 38.05.211(a) is amended to read:

(a) The holder of each mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under AS 38.05.250, shall pay, in advance, rental for the right to continue to hold the mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under AS 38.05.250. Rental is due and payable as follows:

(1) the rental amount for a prospecting site is fixed at \$200 for the two-year term of the site;

(2) annual rental for a mining claim, leasehold location, or mining lease shall be **not less than \$1.65 for each acre during the first five years of a lease and not less than \$3.30 for each acre after the first five years of a lease** [BASED ON THE NUMBER OF YEARS SINCE A MINING CLAIM, A LEASEHOLD LOCATION, OR A MINING LEASE'S PREDECESSOR CLAIM OR LEASEHOLD LOCATION WAS FIRST LOCATED; THE ANNUAL RENTAL AMOUNTS FOR A MINING CLAIM, LEASEHOLD LOCATION, OR MINING LEASE ARE AS FOLLOWS:

	RENTAL AMOUNT FOR EACH MINING CLAIM OR LEASEHOLD LOCATION INCLUDING	
NUMBER OF YEARS SINCE FIRST LOCATED	RENTAL AMOUNT PER ACRE FOR MINING LEASES	EACH QUARTER- QUARTER SECTION MTRSC SYSTEM
0 - 5	\$.50	\$ 20
6 - 10	\$1.00	40
11- OR MORE	\$2.50	100;

(3) THE ANNUAL RENTAL IN ANY YEAR FOR EACH QUARTER SECTION CLAIM, LEASEHOLD LOCATION, OR LEASE BASED ON THE MTRSC SYSTEM IS FOUR TIMES THE RENTAL AMOUNT FOR A QUARTER-QUARTER SECTION MINING CLAIM, LEASEHOLD LOCATION,

1 OR LEASE IN THAT YEAR].

2 * **Sec. 4.** AS 38.05.211(d) is amended to read:

3 (d) **For a claim, leasehold, location, prospecting site, and mining lease,**
4 **including a mining lease under AS 38.05.250, first located before January 1, 2010,**
5 **the** [THE] rental amount established under this section shall be revised by the
6 commissioner as provided in this section based on changes in the Consumer Price
7 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)
8 compiled by the Bureau of Labor Statistics, United States Department of Labor, as
9 revised, rebased, or replaced by that bureau. The reference base index is the index for
10 January - June 1989, as revised or rebased by that bureau. The rental amount shall be
11 increased or decreased, as appropriate, by an amount equal to the change in the index
12 described in this subsection rounded to the nearest whole \$5 unit. The commissioner
13 shall calculate the change in the rental amount each 10 years and, if the rental amount
14 must be revised, shall adopt a regulation establishing the revised rental amount. A
15 revised rental amount applies to a rental payment if the regulation establishing the
16 revised rental amount took effect at least 90 days before the date the rental payment is
17 due.

18 * **Sec. 5.** AS 38.05.211 is amended by adding a new subsection to read:

19 (f) For a claim, leasehold, location, prospecting site, and mining lease,
20 including a mining lease under AS 38.05.250 first located after December 31, 2009,
21 the rental amount established under this section shall be revised by the commissioner
22 as provided in this section based on changes in the Consumer Price Index for all urban
23 consumers, Anchorage Metropolitan Area (Semi-Annual Average) compiled by the
24 Bureau of Labor Statistics, United States Department of Labor, as revised, rebased, or
25 replaced by that bureau. The reference base index is the index for January - June 2005,
26 as revised or rebased by that bureau. The rental amount shall be increased or
27 decreased, as appropriate, by an amount equal to the change in the index described in
28 this subsection rounded to the nearest whole \$5 unit. The commissioner shall calculate
29 the change in the rental amount each 10 years and, if the rental amount must be
30 revised, shall adopt a regulation establishing the revised rental amount. A revised
31 rental amount applies to a rental payment if the regulation establishing the revised

1 rental amount took effect at least 90 days before the date the rental payment is due.

2 * **Sec. 6.** AS 38.05.212(b) is repealed and reenacted to read:

3 (b) The production royalty is

4 (1) subject to the exploration incentive credit authorized by AS 27.30;

5 and

6 (2) three percent of

7 (A) the net smelter return for mining production that is further
8 processed by a smelter or refinery; or

9 (B) the gross value at the point of production as determined
10 under AS 38.05.213 for mining production that is not further processed by a
11 smelter or refinery.

12 * **Sec. 7.** AS 38.05.212 is amended by adding a new subsection to read:

13 (d) In this section, "net smelter return" means the value the person engaged in
14 mining receives from the smelter or refinery and may be based on

15 (1) the spot or current price of the mineral minus deductions for the
16 costs associated with the processing by the smelter or refinery and transportation
17 between the smelter or refinery and the location of the mine; or

18 (2) another method adopted by the department by regulation.

19 * **Sec. 8.** AS 38.05 is amended by adding a new section to read:

20 **Sec. 38.05.213. Gross value at the point of production.** (a) The gross value
21 at the point of production

22 (1) is the value of a resource immediately after its removal from the
23 mine;

24 (2) does not include income from the extraction or processing of
25 resources from mine waste or residue of previously processed resources previously
26 subject to tax under AS 43.65.

27 (b) Except as provided in (c) of this section, the value of a resource
28 immediately after its removal from the mine is the price received by the person
29 engaged in the mining of the resource adjusted for value added after the resource was
30 produced.

31 (c) The price received by the person engaged in the mining of the resource

1 may be rejected by the department as the gross value at the point of production when
2 the

- 3 (1) price received is less than the fair market value;
4 (2) price received does not reflect the total value received by the seller
5 in the transaction;
6 (3) parties to the transaction are affiliated; or
7 (4) price received was not negotiated in an arm's length transaction
8 between the buyer and seller.

9 (d) If the department rejects the price reported by the person engaged in the
10 mining of the resource, the department shall substitute the fair market value of the
11 resource on the date and at the place of production for purposes of determining the
12 production royalty liability under this chapter.

13 (e) The gross value at the point of production shall be calculated using the
14 reasonable costs of transportation if the destination value is used to determine the
15 value at the point of production. The reasonable costs of transportation shall be the
16 actual costs, except when the

- 17 (1) parties to the transportation are affiliated;
18 (2) contract for the transportation is not an arm's length transaction or
19 is not representative of the market value of that transportation;
20 (3) method of transportation is not reasonable in view of existing
21 alternative methods of transportation.

22 (f) If the department finds that the conditions in (e)(1), (2), or (3) of this
23 section are present, the department shall determine the reasonable costs of
24 transportation, using the fair market value of like transportation, the fair market value
25 of equally efficient and available alternative modes of transportation, or another
26 reasonable method. Transportation costs fixed by tariff rates properly on file with the
27 Regulatory Commission of Alaska or another regulatory agency shall be considered
28 prima facie reasonable.

29 (g) In this section,

- 30 (1) "affiliated" means a person who directly, or indirectly through one
31 or more intermediaries, controls, is controlled by, or is under common control with the

1 persons specified;

2 (2) "destination value" means the value of the resource at the
3 destination where production from the mine is delivered for treatment or processing.

4 * **Sec. 9.** AS 43.65 is amended by adding a new section to read:

5 **Sec. 43.65.003. Mining license.** (a) A person engaged in mining after
6 December 31, 2009, shall apply to the department for a mining license before the later
7 of May 1 of each year or within 30 days following the date on which mining begins.

8 (b) The department shall adopt regulations that prescribe the information
9 required to be submitted on a mining license application submitted to the department
10 and a fee for the issuance of the license that represents the reasonable cost of
11 processing the application.

12 * **Sec. 10.** AS 43.65.010(a) is amended to read:

13 (a) A [PERSON PROSECUTING OR ATTEMPTING TO PROSECUTE, OR
14 ENGAGING IN THE BUSINESS OF MINING IN THE STATE SHALL OBTAIN A
15 LICENSE FROM THE DEPARTMENT. ALL] new mining operation may defer the
16 payment of the tax due under [OPERATIONS ARE EXEMPT FROM THE TAX
17 LEVIED BY] this chapter during the first [FOR] three and one-half years after the
18 date production begins. A taxpayer that defers the payment of tax under this
19 subsection shall pay the amount of tax deferred in 10 equal annual installments,
20 without interest, before May 1 of each year beginning with the first calendar year
21 following the date the deferral period ends. The tax deferral [EXEMPTION]
22 granted to a new mining operation [OPERATIONS] does not [EXTEND OR] apply
23 to the mining of sand and gravel.

24 * **Sec. 11.** AS 43.65.010(b) is amended to read:

25 (b) The Department of Natural Resources shall certify to the department the
26 date [UPON WHICH] production begins, and the department shall issue a certificate
27 of deferral [EXEMPTION] to the producer accordingly.

28 * **Sec. 12.** AS 43.65.010(c) is repealed and reenacted to read:

29 (c) The license tax on mining is imposed on the net income of the taxpayer
30 from the property in the state, computed with allowable depletion, plus royalty
31 received in connection with mining property in the state. The tax rates applicable to

1 the amount of a taxpayer's net income are as follows:

2	over \$100,000 and not over \$250,000	5 percent
3	over \$250,000 and not over \$500,000	\$7,500
4		plus 7 percent of the excess over \$250,000
5	over \$500,000 and not over \$1,000,000	\$25,000
6		plus 9 percent of the excess over \$500,000
7	over \$1,000,000	\$70,000
8		plus 11 percent of the excess over \$1,000,000.

9 * **Sec. 13.** AS 43.65.010(d) is amended to read:

10 (d) **If a person conducts** [WHERE] mining operations [ARE CONDUCTED]
 11 in two or more places, [BY ONE PERSON] the operations are considered a single
 12 mining operation and the tax under this chapter is computed upon the aggregate
 13 income derived from all the mining operations. The lessor of a mine operated under a
 14 lease is considered to be engaged in mining within this chapter, and the royalties
 15 received by the lessor are considered to be the net income of the lessor's mining
 16 operations. If the lessor receives royalties from more than one mine or mining
 17 operation, the tax payable under this chapter by the lessor is computed upon the
 18 aggregate royalties received by the lessor from all the mines or mining operations as
 19 though they were a single mining operation.

20 * **Sec. 14.** AS 43.65.010(e) is repealed and reenacted to read:

21 (e) The allowance for depletion shall be computed and deducted on the cost
 22 depletion basis under 26 U.S.C. 612 (Internal Revenue Code).

23 * **Sec. 15.** AS 43.65.010(f) is amended to read:

24 (f) The allowance for depletion may not exceed 50 percent of the net income
 25 of the taxpayer [, COMPUTED WITHOUT ALLOWANCE FOR DEPLETION,] from
 26 the property, **computed without allowance for depletion,** except that in no case may
 27 the depletion allowable be less than it would be if computed on a reasonable cost
 28 basis.

29 * **Sec. 16.** AS 43.65.060(1) is amended to read:

30 (1) "gross income from **the** property" means the gross income from
 31 mining in the state;

1 * **Sec. 17.** AS 43.65.060(2) is amended to read:

2 (2) "mining" means **the extraction or operation to take** [AN
3 OPERATION BY WHICH] valuable metals, ores, minerals, asbestos, gypsum, coal,
4 marketable earth, or stone, or any of them [ARE EXTRACTED, MINED, OR
5 TAKEN] from the earth **and** [; "MINING"] includes the ordinary treatment processes
6 normally applied by **a mine owner or operator** [OWNERS OR OPERATORS] to
7 obtain the commercially marketable product, but does not include the extraction or
8 production of oil and gas;

9 * **Sec. 18.** AS 43.65.060(3) is amended to read:

10 (3) "net income of the taxpayer [(COMPUTED WITHOUT
11 ALLOWANCES FOR DEPLETION)] from the property" **and "taxpayer's net
12 income" mean** [MEANS] the gross income from **mining** [THE PROPERTY], less
13 allowable deductions attributable to the mineral property **for** [UPON] which [THE]
14 depletion is claimed and the allowable deductions attributable to ordinary treatment
15 processes **that** [INSOFAR AS THEY] relate to the product of the property, including
16 overhead and operating expenses, development costs properly charged to expense,
17 depreciation, taxes, **and** losses sustained, [ETC.,] but excluding [ALLOWANCES
18 FOR DEPLETION, AND] deductions for federal **or state** income taxes, or for the tax
19 imposed by this chapter;

20 * **Sec. 19.** AS 43.65.060(4) is amended to read:

21 (4) "new mining **operation** [OPERATIONS]" means **the first mining
22 operation on a property that previously has not been subject to mining** [MINING
23 OPERATIONS WHICH BEGAN PRODUCTION AFTER JANUARY 1, 1953, OR
24 WHICH HAVE NOT BEEN LIABLE TO PAY A MINING LICENSE TAX UNDER
25 THIS CHAPTER ON NET INCOME SINCE JANUARY 1, 1948];

26 * **Sec. 20.** AS 43.65.060(5) is amended to read:

27 (5) "ordinary treatment processes" includes
28 (A) in the case of coal: cleaning, breaking, sizing, and loading
29 for shipment; [,]
30 (B) in the case of sulphur: pumping to vats, cooling, breaking,
31 and loading for shipment; [,]

1 (C) in the case of iron ore, bauxite, ball and sagger clay, rock
 2 asphalt, and minerals **that** [WHICH] are customarily sold in the form of crude
 3 mineral product: sorting, concentrating, and sintering to bring to shipping
 4 grade and form, and loading for shipment; [,] and

5 (D) in the case of lead, zinc, copper, gold, silver, platinum
 6 metals, or fluorspar ores, potash, and ores **that** [WHICH] are not customarily
 7 sold in the form of the crude mineral product: crushing, grinding, and
 8 beneficiation by concentration (gravity, flotation, amalgamation, electrostatic,
 9 or magnetic), cyanidation, leaching, crystallization, precipitation (but
 10 excluding electrolytic deposition roasting, thermal or electric smelting, or
 11 refining), or by substantially equivalent processes or combination of processes
 12 used in the separation or extraction of a product from the ore, including the
 13 furnacing **of** [OR] quicksilver ore;

14 * **Sec. 21.** AS 43.65.060 is amended by adding a new paragraph to read:

15 (7) "date production begins" means the date on which the initial
 16 shipment of products from a mining operation is made;

17 * **Sec. 22.** AS 38.05.211(b), 38.05.211(e); AS 43.65.030, and 43.65.060(6) are repealed.

18 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
 19 read:

20 APPLICABILITY OF MINING ROYALTY AND LEASE AMENDMENTS.
 21 AS 38.05.150(d), as amended by sec. 1 of this Act, applies to leases entered into or
 22 renegotiated after December 31, 2009.

23 * **Sec. 24.** This Act takes effect January 1, 2010.