

SENATE BILL NO. 122

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR BIRCH

Introduced: 5/8/19

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to exemptions to the Pipeline Act; and relating to the calculation of oil**
2 **and gas royalties."**

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 royalty on individual leases, leases
7 unitized as described in (p) of this section, leases subject to an agreement described in
8 (s) or (t) of this section, or interests unitized under AS 31.05

9 (A) to allow for production from an oil or gas field or pool if

10 (i) the oil or gas field or pool has been sufficiently
11 delineated to the satisfaction of the commissioner;

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

14 (iii) oil or gas production from the field or pool would

1 not otherwise be economically feasible;

2 (B) to prolong the economic life of an oil or gas field or pool as
3 per barrel or barrel equivalent costs increase or as the price of oil or gas
4 decreases, and the increase or decrease is sufficient to make future production
5 no longer economically feasible; or

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

8 (2) may not grant a royalty modification unless the lessee or lessees
9 requesting the change make a clear and convincing showing that a modification of
10 royalty meets the requirements of this subsection and is in the best interests of the
11 state;

12 (3) shall provide for an increase or decrease or other modification of
13 the state's royalty share by a sliding scale royalty or other mechanism that shall be
14 based on a change in the price of oil or gas and may also be based on other relevant
15 factors such as a change in production rate, projected ultimate recovery, development
16 costs, and operating costs;

17 (4) may not grant a royalty reduction for a field or pool

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

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

26 (5) may not grant a royalty reduction under this subsection without
27 including an explicit condition that the royalty reduction is not assignable without the
28 prior written approval, which may not be unreasonably withheld, by the
29 commissioner; the commissioner shall, in the preliminary and final findings and
30 determinations, set out the conditions under which the royalty reduction may be
31 assigned;

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

4 (A) may require disclosure of only the financial and technical
5 data related to development, production, and transportation of oil and gas or
6 gas only from the field or pool that are reasonably available to the applicant;
7 and

8 (B) shall keep the data confidential under AS 38.05.035(a)(8)
9 at the request of the lessee or lessees making application for the royalty
10 reduction; the confidential data may be disclosed by the commissioner to
11 legislators and to the legislative auditor and as directed by the chair or vice-
12 chair of the Legislative Budget and Audit Committee to the director of the
13 division of legislative finance, the permanent employees of their respective
14 divisions who are responsible for evaluating a royalty reduction, and to agents
15 or contractors of the legislative auditor or the legislative finance director who
16 are engaged under contract to evaluate the royalty reduction, if they sign an
17 appropriate confidentiality agreement;

18 (7) may

19 (A) require the lessee or lessees making application for the
20 royalty reduction under (1)(A) of this subsection to pay for the services of an
21 independent contractor, selected by the lessee or lessees from a list of qualified
22 consultants compiled by the commissioner, to evaluate hydrocarbon
23 development, production, transportation, and economics and to assist the
24 commissioner in evaluating the application and financial and technical data; if,
25 under this subparagraph, the commissioner requires payment for the services of
26 an independent contractor, the total cost of the services to be paid for by the
27 lessee or lessees may not exceed \$150,000 for each application, and the
28 commissioner shall determine the relevant scope of the work to be performed
29 by the contractor; selection of an independent contractor under this
30 subparagraph is not subject to AS 36.30;

31 (B) with the mutual consent of the lessee or lessees making

1 application for the royalty reduction under (1)(B) or (1)(C) of this subsection,
 2 request payment for the services of an independent contractor, selected from a
 3 list of qualified consultants to evaluate hydrocarbon development, production,
 4 transportation, and economics by the commissioner to assist the commissioner
 5 in evaluating the application and financial and technical data; if, under this
 6 subparagraph, the commissioner requires payment for the services of an
 7 independent contractor, the total cost of the services that may be paid for by
 8 the lessee or lessees may not exceed \$150,000 for each application, and the
 9 commissioner shall determine the relevant scope of the work to be performed
 10 by the contractor; selection of an independent contractor under this
 11 subparagraph is not subject to AS 36.30;

12 (8) shall make and publish a preliminary findings and determination on
 13 the royalty reduction application, give reasonable public notice of the preliminary
 14 findings and determination, and invite public comment on the preliminary findings
 15 and determination during a 30-day period for receipt of public comment;

16 (9) shall offer to appear before the Legislative Budget and Audit
 17 Committee, on a day that is not earlier than 10 days and not later than 20 days after
 18 giving public notice under (8) of this subsection, to provide the committee a review of
 19 the commissioner's preliminary findings and determination on the royalty reduction
 20 application and administrative process; if the Legislative Budget and Audit Committee
 21 accepts the commissioner's offer, the committee shall give notice of the committee's
 22 meeting to all members of the legislature;

23 (10) shall make copies of the preliminary findings and determination
 24 available to

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

26 (B) the chairs of the legislature's standing committees on
 27 resources; and

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

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

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

3 (B) make a final findings and determination; the
4 commissioner's final findings and determination prepared under this
5 subparagraph regarding a royalty reduction is final and not appealable to the
6 court;

7 (C) transmit a copy of the final findings and determination to
8 the lessee;

9 (D) with the applicant's consent, amend the applicant's lease or
10 unitization agreement consistent with the commissioner's final decision; and

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

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

16 **(13) may enter into a contract with a lessee that provides that the**
17 **lessee may not claim a transportation deduction related to the transportation of**
18 **oil or gas through a pipeline that is exempt from rate regulation under**
19 **AS 42.06.601 for the purpose of calculating a royalty or payment obligation for a**
20 **lease entered into under this section.**

21 * **Sec. 2.** AS 42.06.601 is amended by adding new subsections to read:

22 (b) An eligible pipeline carrier may claim an exemption from AS 42.06.370
23 and 42.06.390 - 42.06.420 by filing a notification of exemption and a certification of
24 revenue with its annual report to the commission under AS 42.06.430. To be eligible
25 for an exemption under this subsection, a pipeline carrier must

26 (1) have been in continuous operation for at least three years;

27 (2) have an annual gross operating revenue of less than \$250,000 from
28 the combined interstate and intrastate transportation of oil, gas, oil or gas products, or
29 a combination of oil, gas, or oil and gas products; and

30 (3) obtain, for each party using the pipeline to transport oil or gas for
31 which a royalty is reserved for the state, notice from the commissioner of natural

1 resources that the party has contractually agreed with the state not to claim a
 2 transportation deduction related to the pipeline for purposes of calculating its royalty
 3 and payment obligations for a lease entered into under AS 38.05.180.

4 (c) Except as provided in (e) of this of this section, the commission may grant
 5 an exemption from AS 42.06.370 and 42.06.390 - 42.06.420 to a pipeline carrier not
 6 otherwise exempt under (b) of this section for a pipeline carrying oil, gas, oil or gas
 7 products, or a combination of oil, gas, or oil and gas products if

8 (1) the commission finds that

9 (A) the pipeline carrier has been in continuous operation for at
 10 least three years;

11 (B) the exemption is in the public interest; and

12 (C) granting the exemption is justifiable on the basis of public
 13 convenience and necessity;

14 (2) either the

15 (A) shippers on the pipeline carrier are exclusively affiliated
 16 interests of the pipeline carrier and each other; or

17 (B) volume of oil, gas, and oil and gas products transported
 18 through the pipeline does not consistently or reliably generate sufficient
 19 income under a just and reasonable rate to

20 (i) cover reasonable operating, maintenance, and
 21 depreciation expenses; and

22 (ii) produce a reasonable return on investment; and

23 (3) the pipeline carrier obtains, for each party using the pipeline to
 24 transport oil or gas for which a royalty is reserved for the state, notice from the
 25 commissioner of natural resources that the party has contractually agreed with the
 26 state not to claim a transportation deduction related to the pipeline for purposes of
 27 calculating its royalty and payment obligations for a lease entered into under
 28 AS 38.05.180.

29 (d) The commission may terminate an exemption granted under (b) or (c) of
 30 this section if the commission finds that the pipeline carrier no longer meets the
 31 criteria in (b) or (c) of this section. Notwithstanding AS 42.04.080, and except when

1 making a finding under (c)(2)(B) of this section, the commission may, after providing
2 30 days' notice, terminate an exemption granted under this section without a hearing.

3 (e) When considering whether to terminate an exemption under (d) of this
4 section, the commission may ascertain and set the fair value of the property of a
5 pipeline carrier under AS 42.06.420.

6 (f) Subsections (b) - (e) of this section do not apply to the Trans Alaska
7 Pipeline System.