Introduced: 3/22/79
Referred: Resources and Finance

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL (for the State Energy Policy Committee)

IN THE HOUSE

HOUSE BILL NO. 420

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to royalties for coal mined from state land."

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

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

(b) Thereafter the commissioner may, upon the request of a qualified applicant or on his own motion, from time to time, offer the lands or deposits of coal for leasing. Each lease shall be awarded to a qualified applicant by competitive bidding [OR BY THE METHOD WHICH THE COMMISSIONER ADOPTS BY GENERAL REGULATION]. Following a pre-lease analysis, the commissioner must choose at least one of the following leasing methods:

(1) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease by surface mining and eight per cent in amount or value of the production removed or sold from the lease by underground mining;

(2) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease by surface mining and eight per cent in amount or value of the production removed or sold from the lease by underground mining and a fixed share of the net profit derived from the lease of not less than 15 per cent reserved to the state;

(3) a fixed cash bonus with a royalty share reserved to the state as the bid variable of no less than 12 1/2 per cent in amount

or value of the production removed or sold from the lease by surface mining and no less than eight per cent in amount or value of the production removed or sold from the lease by underground mining;

(4) a fixed cash bonus with a share of the net profit derived from the lease reserved to the state as the bid variable;

(5) a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease by surface mining and eight per cent in amount or value of the production removed or sold from the lease by underground mining with a share of the net profit derived from the lease reserved to the state as the bid variable.

* Sec. 2. AS 38.05.150(d) is amended to read:

(d) [FOR THE PRIVILEGE OF MINING OR EXTRACTING THE COAL IN THE LANDS COVERED BY THE LEASE, THE LESSEE SHALL PAY TO THE STATE THE ROYALTIES SPECIFIED IN THE LEASE. THE ROYALTIES SHALL BE FIXED BEFORE OFFERING THE LEASE, AND SHALL BE EFFECTIVE FOR A PERIOD OF NOT MORE THAN 20 YEARS. THE ROYALTIES SHALL BE NOT LESS THAN FIVE CENTS A TON OF 2,000 POUNDS.] The lessee shall [ALSO] pay an annual rental, payable at the date of the lease and annually thereafter, on the land or coal deposits covered by the lease, at a rate fixed by the commissioner before offering the lease. The annual rental shall be effective for a period of not more than 20 years. The annual rental shall be not less than 25 cents an acre for the first year of the lease, not less than 50 cents an acre for the second year, third year, fourth year and fifth year, and not less than $1 an acre for each year thereafter during the continuance of the lease. The rental for each year shall be credited against the royalties as they accrue for that year. Each lease shall provide that the annual rental payment is subject to adjustment at intervals of no more than 20 years and adjustments shall be based on the current rates for properties similarly situated.

* Sec. 3. AS 38.05.150 is amended by adding new subsections to read:

(f) The share of the net profit derived from a lease reserved to the state under (b) of this section is a mineral lease royalty for the purposes of the Alaska permanent fund under AS 37.10.065 and the Alaska renewable resources development fund under AS 37.11.020.

(g) The commissioner may reduce the rental or royalty to be paid under a lease if, in the interests of conservation and to encourage the greatest ultimate recovery of coal, he determines that the reduction is necessary to promote development of coal or is in the best interests of the state.

(h) The commissioner shall define all terms and adopt all regulations necessary for a reasonable understanding and evaluation of a particular bidding method under this section before the public announcement of the terms of the proposed lease employing that bidding method.

* Sec. 4. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.151. DETERMINATION OF ROYALTY. (a) For the purpose of determining the amount of royalty due under AS 38.05.150(b), when only crushing, storing, and loading are performed before the point of sale, the value of the coal for royalty purposes is the gross value at the point of sale. However, if additional processing of the coal is performed before sale, such as washing to remove waste, bone, or other impurities, the processing cost above the cost of primary crushing, storing and loading may be deducted from the gross value in determining value for royalty purposes; the commissioner may allow the deduction only when, in his judgment, the lessee provides him an accurate account of the costs incurred.

(b) The gross value is the sale or contract unit price times the number of units sold, except as otherwise provided in (c) of this section.

(c) If the commissioner determines either that a contract of sale or other business arrangement between the lessee and a purchaser of coal produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal, or that no consideration is received for some or all of the coal because the lessee is consuming the coal for his own use or adding it to inventories, the commissioner shall determine the gross value of the coal. For purposes of this subsection, in determining the gross value of coal the commissioner shall take into account

(1) any consideration received by the lessee in other related transactions,

(2) the highest price paid for coal of like quality produced from the same general area during the lease month,

(3) contracts or other business arrangements between coal producers and purchasers for the sale of coal other than coal produced under the lease, which are comparable in terms, volume, time of execution, area of supply and other circumstances; and

(4) other relevant factors the commissioner considers appropriate;

(d) If coal which was added to inventories and for which the gross value has been determined in accordance with this subsection is eventually sold, the commissioner may require the payment of additional royalties, or allow credits or refunds, as necessary to adjust the royalty payments to reflect the actual gross value of the coal;

(e) All bone coal, rock, and other impurities may be removed from the raw coal before determination of coal weights for royalty purposes;

(f) If royalties are payable before removal of bone coal, rock, and other impurities or final weighing of coal, the commissioner may determine, by estimate, the weight of the coal for royalty purposes, and may, after the removal of bone coal, rock, and other impurities and final weighing of the coal, require the payment of additional royalties, or allow credits or refunds, as necessary to adjust the royalty payments to reflect the true weight of the coal.

(g) An audit of the accounts of a lessee for the purpose of determining compliance with lease terms relating to royalties may be required annually, or more often, by the commissioner. The audit shall be made by a qualified independent certified public accountant, at the expense of the lessee. The lessee shall furnish to the commissioner, without cost, duplicate copies of audit reports which express opinions on compliance. The copies must be furnished within 30 days of the completion of each audit. If an audit is required, the commissioner will specify the purpose and scope of the audit and the information which is to be verified or obtained.

* Sec. 5. AS 42.05.381 is amended by adding a new subsection to read:

(d) No utility, whether subject to regulation by the commission or exempt from regulation, which uses coal produced from state land, may include in its rate base royalties paid to the state for that coal.