

Introduced: 4/2/81
Referred: Special Gas
Pipeline Committee and
Finance

1 IN THE HOUSE

BY THE SPECIAL GAS
PIPELINE COMMITTEE

2 HOUSE BILL NO. 466

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska royalty trust; and
7 providing for an effective date.

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

9 * Section 1. POLICY, PURPOSES, AND FINDINGS. (a) It is the duty and
10 policy of the state with respect to the natural resources belonging to it
11 and the income derived from them to provide for their use, development, and
12 conservation for the maximum benefit of its people.

13 (b) The purposes of this Act are

14 (1) to transfer part of Alaska's petroleum wealth to its people
15 in the form of income-producing assets;

16 (2) to encourage increased awareness and involvement by the
17 people of Alaska in the management of natural resource production and develop-
18 ment.

19 (c) The legislature finds that

20 (1) it is in the public interest and in the furtherance of a
21 public purpose to distribute a portion of Alaska's wealth to the people of
22 Alaska in the form of income-producing assets in order to increase their
23 involvement and awareness regarding the management of the state's natural
24 resources;

25 (2) a mechanism by which the state distributes a portion of its
26 resource royalties will best promote the state's interests in producing a
27 more personal and direct stake by its people in the impact of decisions
28 involving the state's natural resource production and development.

29 * Sec. 2. AS 37 is amended by adding a new chapter to read:

1 CHAPTER 40. ALASKA ROYALTY TRUST.

2 ARTICLE 1. ROYALTY TRUST ESTABLISHED.

3 Sec. 37.40.010. ROYALTY TRUST ESTABLISHED. The Alaska royalty
4 trust is established in the Department of Revenue to carry out the
5 purposes of this chapter.

6 Sec. 37.40.020. TRUSTEE. The commissioner of revenue or his
7 agent or designee is the trustee of the trust established in AS 37.40.-
8 010 and shall

9 (1) act as the official custodian of the securities and cash
10 belonging to the trust;

11 (2) receive transfers and appropriations of cash and securi-
12 ties to the trust;

13 (3) invest and reinvest the principal of the trust in accord-
14 ance with AS 37.10.070;

15 (4) collect interest, dividends, and royalties earned on
16 assets, securities and investments of the trust;

17 (5) provide for the distribution and sale of share certifi-
18 cates in the trust to eligible beneficiaries; and

19 (6) determine and make distributions of trust income to the
20 beneficiaries of the trust.

21 Sec. 37.40.030. PURPOSE. The purpose of the trust is to provide
22 an efficient and practical means of permitting each certificate holder
23 to receive his pro rata share of the proceeds attributable to the
24 royalties conveyed to the trust. This purpose is realized by retaining
25 and collecting the cash proceeds of royalties and distributing that
26 cash, net of expenses and liabilities of the trust, to the certificate
27 holders pro rata on a quarterly basis.

28 Sec. 37.40.040. TRUST ASSETS. The assets of the trust consist of
29 the royalties conveyed to the trust under AS 37.40.060.

1 Sec. 37.40.060. CONVEYANCE OF ROYALTIES. (a) The commissioner
2 of natural resources shall convey to the trust a portion of the state's
3 royalty interest in leases or properties of the state as authorized by
4 law.

5 (b) The conveyance is only of the state's royalty interest and
6 not the entire mineral interest which will be retained by the state.
7 The conveyance of the royalty interest shall be for so long as there is
8 production in paying quantities from the leases or properties described
9 in (a) of this section. After production in paying quantities ceases,
10 the royalty interest reverts to the state.

11 (c) The conveyance to the trust is subject to the prior obliga-
12 tions of the state to make payments from the royalty interest to the
13 Alaska permanent fund under art. IX, sec. 15 of the state constitution
14 and AS 37.13.010, the Alaska renewable resources development fund under
15 AS 37.10.011, and the Alaska Native Fund under sec. 9(b) of the Alaska
16 Native Claims Settlement Act (P.L. 92-203 43 U.S.C. 1601 et seq.) The
17 conveyance is also subject to the rights and obligations of the lessor
18 and lessee of the leases and properties described in (a) of this section
19 including the right to a reduction in royalty as authorized by AS 38.-
20 05.180(j), the right to enter into storage or exchange agreements
21 concerning royalty under AS 38.05.180(1), the right to elect to take
22 royalty in kind or in value as authorized by AS 38.05.182, and any
23 future sales, exchanges, or other disposal or encumbrance which the
24 commissioner of natural resources is presently authorized by law or may
25 be authorized by law in the future to make or place upon the royalty
26 interest.

27 (d) If at the time of conveyance the royalty interest is subject
28 to contracts of sale, the conveyance must expressly identify the con-
29 tracts and state that the conveyance is subject to them and does not

1 limit the state's rights, duties, and obligations under them.

2 (e) The royalty interest conveyed under this section includes the
3 interest of the state in the net proceeds from a sale, exchange, or
4 other disposition of royalty oil and gas taken in kind from the proper-
5 ties described in (a) of this section.

6 Sec. 37.40.070. NO POWER TO ENGAGE IN BUSINESS. The trustee may
7 not, in his capacity as trustee under the trust, acquire an oil and gas
8 lease, a mineral interest, or a royalty other than the royalties con-
9 veyed under AS 37.40.060 or acquire any other asset or engage in a
10 business.

11 Sec. 37.40.080. LIABILITY OF TRUSTEE. The trustee's standard of
12 care and liability shall be determined under AS 13.36.

13 Sec. 37.40.090. COMPENSATION OF TRUSTEE. The trustee shall be
14 compensated for his expenses in administering the trust but shall
15 receive no other compensation for his services.

16 Sec. 37.40.100. PAYMENT OF LIABILITIES. The trustee may use all
17 money received by him in the payment of all liabilities of the trust,
18 including but not limited to, expenses, taxes, liabilities incurred of
19 all kinds, compensation for his expenses, and compensation to persons
20 employed by him. If a liability is contingent or uncertain in amount
21 or is not currently due and payable, the trustee may establish a
22 temporary cash reserve for payment. The trustee may not pay any liabil-
23 ity of the trust with money set aside for the payment of a quarterly
24 distribution amount unless there is no other available money in the
25 trust estate and the trustee is satisfied that on the distribution date
26 there will be sufficient money to pay the quarterly distribution amount.
27 If money set aside for payment of a quarterly distribution is used, the
28 amount used shall be treated as a liability of the trust and shall bear
29 interest at the average rate obtained for the investment of other trust

1 assets.

2 ARTICLE 2. TERMINATION OF TRUST AND LIQUIDATION.

3 Sec. 37.40.110. DURATION, REVOCATION, AND TERMINATION OF TRUST.

4 (a) The trust is irrevocable. The trust is terminable only as provided
5 in this section and continues until so terminated.

6 (b) The trust shall terminate upon the termination of production
7 from the properties for which the royalties are due.

8 Sec. 37.40.120. LIQUIDATION. (a) Upon termination of the trust,
9 the trustee shall proceed to liquidate and wind up the affairs of the
10 trust. For the purpose of liquidating and winding up the affairs of
11 the trust at its termination, the trustee shall continue to act and
12 exercise each power until his duties have been fully performed and the
13 trust estate has been finally distributed. The trustee shall, as
14 promptly as possible, distribute the cash in the trust estate according
15 to the respective interests and rights of the certificate holders,
16 after paying, satisfying and discharging all of the liabilities of the
17 trust; or, when necessary, setting up reserves in amounts the trustee
18 in his discretion considers appropriate for contingent liabilities.
19 Upon making final distribution to the certificate holders, the trustee
20 is under no further liability except as provided in AS 13.36.

21 ARTICLE 3. BENEFICIAL INTERESTS.

22 Sec. 37.40.130. CREATION OF BENEFICIAL SHARES AND CERTIFICATES.

23 The ownership of the units shall be evidenced by certificates in sub-
24 stantially the following form:

25 CERTIFICATE OF BENEFICIAL INTEREST

26 IN

27 ALASKA ROYALTY TRUST

28 Created by, issued under, and subject to the Alaska Royalty Trust
29 Indenture dated as of _____

1 appraised value for assets is a value determined by generally accepted
2 appraisal methods and shall be calculated using

3 (1) estimates of resource production volumes having an accu-
4 racy confidence level of 75 percent or greater;

5 (2) an assumed rate of increase in future world prices for
6 resources not exceeding the general rate of price inflation in the
7 United States; and

8 (3) a discount rate reflecting the judgment of private in-
9 vestors as to the expected rate of return before payment of taxes re-
10 quired to justify incremental investments in the exploration and de-
11 velopment of resources comparable to those committed to the Alaska
12 royalty trust.

13 Sec. 37.40.150. ELIGIBILITY. (a) To be eligible to purchase a
14 unit under AS 37.40.170 or to receive a unit distributed under AS 37.-
15 40.160, an individual must

16 (1) be a resident of the state on the eligibility date
17 established in the portfolio plan under which the unit is distributed;

18 (2) apply to the department; and

19 (3) submit with the application a signed, sworn certification
20 that he was a resident of the state on the eligibility date and other
21 proof of residency as the commissioner may require, including

22 (A) evidence that he was registered to vote in Alaska
23 on the eligibility date, and actually voted in the last statewide
24 general election before that date;

25 (B) an Alaska driver's license, or a resident hunting,
26 fishing, or trapping license, issued on or before the eligibility
27 date, and valid on the eligibility date;

28 (C) evidence that, on the eligibility date, he had
29 telephone or utility service at a residence in the state listed in

1 his name or in the name of a spouse, or, if the individual is a
2 minor, in the name of a parent or guardian;

3 (D) an affidavit of one or more individuals having
4 personal knowledge concerning his residency on the eligibility
5 date; and

6 (E) other documentary evidence of residency acceptable
7 to the commissioner.

8 (b) An individual is presumed to be a resident of the state on
9 the eligibility date if he provides at least two items specified in
10 (a)(3) of this section.

11 (c) The department shall prescribe and furnish a form for applica-
12 tions and for certification of residency.

13 Sec. 37.40.160. DISTRIBUTION AND SALE OF BENEFICIAL CERTIFICATES.
14 The trustee shall determine the total number of units each eligible
15 individual is entitled to obtain from the trust by dividing the entire
16 number of units established under AS 37.40.140 by the total number of
17 eligible individuals established under AS 37.40.150. The trustee shall
18 distribute 25 percent of the number of the units to the eligible indi-
19 viduals free without charge. Each eligible individual shall also
20 receive, along with the free units, six purchase warrants. Each pur-
21 chase warrant shall entitle the holder to purchase an additional 12-1/2
22 percent of the units from the trust to which the individual is entitled.

23 Sec. 37.40.170. PURCHASE WARRANTS. (a) Each purchase warrant
24 entitles an eligible individual to purchase one-eighth of the number of
25 units to which the individual is entitled. Purchase warrants issued to
26 an individual shall be exercised according to the following schedule:

27 (1) the first purchase warrant must be exercised not later
28 than one year after the purchase warrant was issued;

29 (2) the second, not later than two years after the purchase

1 warrant was issued;

2 (3) the third, not later than three years after the purchase
3 warrant was issued;

4 (4) the fourth, not later than four years after the purchase
5 warrant was issued;

6 (5) the fifth, not later than five years after the purchase
7 warrant was issued;

8 (6) the sixth, not later than six years after the purchase
9 warrant was issued.

10 (b) Payment for units purchased using a purchase warrant may be
11 made by cash, check, or money order.

12 (c) A purchase warrant is void if transferred. A purchase warrant
13 may not be used except by an individual who is a resident of the state.

14 Sec. 37.40.180. OWNERSHIP AND TRANSFERABILITY OF UNITS. (a) An
15 eligible individual who has received a unit in the trust under this
16 chapter may not be required to return, sell, or otherwise relinquish
17 that unit as a result of ceasing to be a resident. A unit may not be
18 sold, given, assigned, transferred, or otherwise conveyed except by
19 inheritance to an individual who is not a resident, and the trustee may
20 cancel any certificates representing units sold, given, assigned,
21 transferred, or otherwise conveyed, except by inheritance, to persons
22 other than an individual who is a resident.

23 (b) An individual may not own directly or indirectly more than
24 100 units in the trust, and the trustee may not distribute to any
25 person directly or indirectly payments under the trust in excess of
26 that amount attributable to 100 units in the trust. For purposes of
27 this subsection, the rules prescribed by sec. 318 of the Internal
28 Revenue Code (26 U.S.C. sec. 318) for determining the ownership of
29 stock apply for determining the ownership of units of the trust.

1 Sec. 37.40.190. EXECUTION OF CERTIFICATES. All certificates
2 shall be signed by the trustee or an authorized agent of the trustee.

3 Sec. 37.40.200. REGISTRATION AND TRANSFER OF UNITS. The units
4 may be transferred by the certificate holders in accordance with AS 37.-
5 40.180 and this section. The units shall be transferable as against
6 the trustee only on the records of the trustee upon the surrender of
7 certificates and compliance with reasonable regulations that he may
8 prescribe. A service charge may not be made for a transfer of a unit.
9 Until a transfer, the trustee may treat the individual listed as owner
10 of any certificate on the records of the trustee as the owner of the
11 units evidenced by them and is not charged with notice of any claim or
12 demand respecting a certificate or the interest represented by another
13 party. A transfer of a unit shall, as to the trustee, transfer to the
14 transferee as of the close of business on the date of transfer all of
15 the right, title, and interest of the transferor in and to the bene-
16 ficial interest. The death of a certificate holder does not entitle
17 the transferee to an account or valuation for any purpose, but the
18 transferee succeeds to all rights of the deceased certificate holder
19 under this chapter upon proper proof of title satisfactory to the
20 trustee.

21 Sec. 37.40.210. DETERMINATION OF OWNERSHIP OF CERTIFICATES. In
22 the event of a disagreement between persons claiming to be transferee
23 of any certificate holder, the trustee is entitled at his option to
24 refuse to recognize the claims so long as the disagreement continues.
25 In so refusing, the trustee may elect not to make delivery or other
26 disposition of the interest represented by the certificate involved, or
27 any part of it, or of any sum or sums of money accrued or accruing
28 under it, and, in so doing, the trustee is not liable to any person for
29 the failure or refusal of the trustee to comply with the conflicting

1 claim and the trustee is entitled to continue to refuse to act until

2 (1) the rights of the adverse claimants have been adjudicated
3 by a final judgment of a court assuming and having jurisdiction of the
4 parties and the interest and money involved; or

5 (2) all differences have been adjusted by valid agreement
6 between the parties and the trustee has been notified in writing signed
7 by all of the interested parties.

8 ARTICLE 4. ACCOUNTING AND DISTRIBUTION.

9 Sec. 37.40.220. FISCAL YEAR AND ACCOUNTING METHOD. The trustee
10 shall adopt the fiscal year of the state, and shall maintain the books
11 of the trust in accordance with generally accepted accounting princi-
12 ples.

13 Sec. 37.40.230. DISTRIBUTIONS. (a) The trustee shall determine
14 the quarterly distribution amount for each quarter and on the quarterly
15 record date for that quarter shall establish a cash reserve equal to
16 that amount. During the months of January, April, July, and October of
17 each year, the trustee shall for each of the immediate preceding three
18 months, distribute pro rata the quarterly distribution amount for that
19 quarter, together with interest earned on that amount from the quarter-
20 ly record date for that quarter to the payment date, to the certificate
21 holder on the quarterly record date for that quarter.

22 (b) the quarterly distribution amount shall be the amount deter-
23 mined by the trustee equal to the excess, if any, of

24 (1) the cash received during a calendar quarter which is
25 attributable to the royalties plus any decrease in a cash reserve
26 established by the trustee for the payment of a liability of the trust
27 plus any other cash receipts of the trust during the quarter other than
28 interest earned on the quarterly distribution amount for any other
29 quarter over

1 (2) the liabilities of the trust paid during that quarter
2 plus the amount of any cash reserve established or increased by the
3 trustee for the payment of future or contingent liabilities of the
4 trust.

5 (c) The quarterly record date for each shall be the close of
6 business on the last business day of the quarter.

7 Sec. 37.40.240. CALCULATION OF THE INDIVIDUAL CERTIFICATE DISTRI-
8 BUTION. The individual certificate distribution amount shall be deter-
9 mined by dividing the total quarterly distribution amount by the total
10 certificates as determined in AS 37.40.140, both issued and unissued.
11 The dividend shall be paid to each individual holder of an issued
12 certificate. The remainder shall be retained by the trustee and cre-
13 dited to the unissued certificates. At the time that a purchase warrant
14 is exercised and a certificate is issued the total amount attributable
15 to the certificate to that date shall be paid with the first quarterly
16 dividend to be paid to the certificate holder.

17 Sec. 37.40.250. TAX REPORTING. For tax purposes, the trustee
18 shall file returns and statements as in his judgment are required to
19 comply with applicable provisions of law and to permit each certificate
20 holder to correctly report his share of the income and deductions of
21 the trust.

22 Sec. 37.40.260. AUTHORITY TO PARTICIPATE IN MARKET. (a) If the
23 commissioner determines that an efficient public market does not exist
24 for the sale of units, he may buy, sell, and trade in units for the
25 purpose of establishing a market.

26 (b) If the commissioner trades in units under (a) of this section,
27 he shall maintain an average markup sufficient to compensate the state
28 for the administrative costs of his trading activity and shall publish
29 regularly the bid and asking prices for units traded.

1 (c) In this section, "efficient public market" means a market in
2 which the units distributed under this chapter have a readily ascer-
3 tainable market value and in which they may be bought or sold readily
4 without unnecessary or unreasonable transaction costs.

5 Sec. 37.40.270. REPORTS TO CERTIFICATE HOLDERS. At the end of
6 each calendar quarter, the trustee shall mail to each person who was a
7 certificate holder of record on a quarterly record date during that
8 quarter a report which shows, in reasonable detail, the assets, liabili-
9 ties, receipts and disbursements of the trust for the quarter. Within
10 90 days following the end of each fiscal year, the trustee shall mail
11 to each person who was a certificate holder of record for a date to be
12 selected by the trustee, an annual report containing financial state-
13 ments audited by a nationally recognized firm of independent public
14 accountants selected by the trustee.

15 ARTICLE 5. GENERAL PROVISIONS.

16 Sec. 37.40.280. INSPECTION OF TRUSTEE'S BOOKS. A certificate
17 holder and his authorized agents, attorneys, and auditors have the
18 right during reasonable business hours to examine, inspect, and make
19 audits of the trust and the records of the trustee in reference to the
20 trust.

21 Sec. 37.40.290. PROCEEDS OF SALE OF CERTIFICATES. The proceeds
22 from the sale of share certificates shall be placed in the trust account
23 and become part of the trust principal.

24 Sec. 37.40.300. REPORT. The trustee shall annually file with the
25 governor and the legislature by the convening of each regular legisla-
26 tive session a report of the activities of the trust for the preceding
27 year.

28 Sec. 37.40.310. WAIVER. The provisions of AS 38.05.125, 38.05.-
29 183, and AS 38.06 do not apply to a conveyance under this chapter.

1 Sec. 37.40.320. DEFINITIONS. In this chapter,

2 (1) "beneficial interest" means an equitable interest in
3 cash of the trust estate including without limitation the proceeds from
4 the conversion of the royalties to cash, and in the right to cash from
5 the conversion of royalties, but does not include any legal or equit-
6 able title in or to the royalties as any part of the royalties;

7 (2) "certificate" means a certificate issued by the trustee
8 evidencing ownership of one or more units;

9 (3) "certificate holder" means the owner of a certificate as
10 reflected on the books of the trustee;

11 (4) "commissioner" means the commissioner of revenue;

12 (5) "conveyance" means the transfer of royalties to the
13 trust by the state;

14 (6) "department" means the Department of Revenue;

15 (7) "eligible individual" means an individual who is a
16 resident as of an eligibility date determined by the commissioner;

17 (8) "individual" means a natural person;

18 (9) "resident" means an individual who maintains a permanent
19 place of abode in the state with the intention of making the state his
20 permanent place of residence and who resides in the state continuously
21 except for temporary purposes only and with the intent of returning; a
22 person may not be considered to have gained a residence solely by
23 reason of his presence and he may not lose it solely by reason of his
24 absence while in the civil or military service of this state or of the
25 United States or by reason of his absence because of marriage to a
26 person engaged in the civil or military service of this state or the
27 United States; a person may not be considered to lose his residence
28 while a student at an educational institution, while in an institution
29 at public expense, while confined in prison, while engaged in the

1 navigation of waters of this state, of the United States, or of the
2 high seas, or while residing on an Indian or military reservation; a
3 minor takes the residence of his parent or of his legal guardian; a
4 married woman may establish her own residence and does not presump-
5 tively take the residence of her husband;

6 (10) "royalties" means the royalties conveyed to the trust
7 under this chapter;

8 (11) "trust" means the Alaska royalty trust created by and
9 administered under the terms of this chapter and the trust indenture;

10 (12) "trustee" means the entity serving as trustee of the
11 trust and includes any successor trustee;

12 (13) "trust estate" means the assets held by the trustee
13 under the trust and includes both income and principal;

14 (14) "trust indenture" means the trust indenture originally
15 executed by the commissioner of revenue and the trustee under this
16 chapter, and any amendments or supplements to it;

17 (15) "unit" means an undivided fractional interest in the
18 beneficial interest.

19 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
20 070(c).