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Referred: Finance

go0759sH

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 CS FOR SENATE BILL NO. 129 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to rent and royalty payments for a  
7 mining claim, leasehold location, or mining lease, to  
8 mineral-in-character determinations, to annual labor  
9 requirements for and to abandonment of a mining  
10 claim, leasehold location, or mining lease and to  
11 mining license tax information; and providing for an  
12 effective date."  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
14 \* Section 1. AS 38.05.036(a) is amended to read:  
15 (a) The Department of Revenue shall audit reports, payments, and  
16 payments due relating to  
17 (1) the royalty and net profits under oil and gas con-  
18 tracts, agreements, or leases under AS 38.05.180;  
19 (2) the royalty on net income from mining claims, leasehold  
20 locations, or mining leases under AS 38.05.212 [THIS CHAPTER].  
21 \* Sec. 2. AS 38.05.036(c) is amended to read:  
22 (c) All information obtained by the Department of Revenue relat-  
23 ing to royalty and net profits payments under AS 38.05.180 or royalty  
24 on net income under AS 38.05.212, including information obtained under  
25 AS 43, may be made available to the department, in the form of sum-  
26 maries and, when in furtherance of the department's royalty and net  
27 profits functions, relevant portions of the audits. Information made  
28 available to the department that was obtained under AS 43 is confiden-  
29 tial and subject to the provisions of AS 43.05.230.

1 \* Sec. 3. AS 38.05.036(e) is amended to read:

2 (e) In this section, "audit" means the process of obtaining  
3 sufficient competent evidentiary matter through inspection, observa-  
4 tion, inquiry, and confirmation to afford a reasonable basis for  
5 ascertaining the compliance by the subject of the audit with the  
6 applicable law, regulation, lease, agreement, and contract terms; it  
7 does not include any other actions necessary to administer this chap-  
8 ter pertaining either to oil and gas royalty and net profits payments  
9 under AS 38.05.180 or to mining royalty payments on net income under  
10 AS 38.05.212, including daily accounting functions, certification  
11 procedures associated with those accounting functions, and enforcement  
12 of payments of royalties and net profits.

13 \* Sec. 4. AS 38.05.205(b) is amended to read:

14 (b) Beginning on the date established by the commissioner under  
15 AS 38.05.210, [THERE SHALL ACCRUE] an annual rental accrues for each  
16 leasehold location or portion of a leasehold location, [THEREOF]  
17 whether or not under lease, in the amounts established in AS 38.05.211  
18 [NOT LESS THAN THE VALUE OF ANNUAL LABOR IMPROVEMENTS REQUIRED FOR  
19 MINING CLAIMS. THE VALUE OF WORK DONE ON, OR FOR THE BENEFIT OF, THE  
20 LEASEHOLD IN COMPLIANCE WITH AS 38.05.210 MAY BE CREDITED AGAINST THE  
21 RENTAL].

22 \* Sec. 5. AS 38.05.205(c) is amended to read:

23 (c) A mining lease shall be for any period up to 55 years, and  
24 is renewable if requirements for the lease remain satisfied. Annual  
25 rental and production royalties shall be paid as required under  
26 AS 38.05.211 and 38.05.212 [THE LESSEE HAS A RIGHT TO A NEW LEASE AT  
27 THE END OF EACH LEASE PERIOD. THE COMMISSIONER MAY MAKE REASONABLE  
28 ADJUSTMENTS OF THE RENTAL RATE AT THE END OF EACH 20 YEAR PERIOD,  
29 BASED UPON CHANGED CONDITIONS IN PRODUCTION COSTS AND MARKETS]. A

1 valid mining claim located and held under AS 38.05.195 may be con-  
2 verted to a lease at any time upon application by the owner, and  
3 issuance by the commissioner. Rights [NO RIGHTS] granted by a mining  
4 lease may not be exercised until the lease has been filed for record  
5 in the recording district where the land is located.

6 \* Sec. 6. AS 38.05 is amended by adding a new section to read:

7 Sec. 38.05.206. MINERAL CHARACTER DETERMINATIONS. (a) Within  
8 three years after the receipt by the commissioner of a request for a  
9 mineral character determination from the holder of the mining claim,  
10 the commissioner shall determine under AS 38.05.243 whether the land  
11 underlying a mining claim was mineral in character at the time of  
12 state selection.

13 (b) A holder of a mining claim who fails to make a request for a  
14 mineral character determination to the commissioner by September 1,  
15 1990, or within one year from the location of the mining claim, which-  
16 ever is later, shall make rental payments under AS 38.05.211 and  
17 royalty payments under AS 38.05.212 until the commissioner makes a  
18 mineral character determination concerning the land under AS 38.05.-  
19 243. A holder of a mining claim who makes a request for a mineral  
20 character determination to the commissioner by September 1, 1990, or  
21 within one year after the location of the mining claim, whichever is  
22 later, does not owe rental payments under AS 38.05.211 or royalty  
23 payments under AS 38.05.212 until the commissioner makes the mineral  
24 character determination under AS 38.05.243.

25 (c) On the determination by the commissioner that the land  
26 underlying the mining claim was mineral in character at the time of  
27 state selection, the holder of the mining claim is liable for rental  
28 and royalty payments from the date of location or August 31, 1989,  
29 whichever comes later.

1 (d) On the determination by the commissioner that the land  
2 underlying the mining claim was not mineral in character at the time  
3 of state selection and that the holder of the mining claim has made  
4 rental payments under AS 38.05.211 or royalty payments under AS 38.-  
5 05.212 on the claim, the commissioner shall refund to the holder of  
6 the mining claim all rental and royalty payments paid on the mining  
7 claim.

8 (e) If the commissioner fails to make a mineral character deter-  
9 mination within three years from the date of a request for a deter-  
10 mination, the amount of the rental and royalty due under AS 38.05.211  
11 and 38.05.212 is reduced by 50 percent from the time that the deter-  
12 mination was requested through the date that the determination is  
13 made. The holder of a mining claim may request that any excess pay-  
14 ment accumulated under this subsection be

15 (1) applied to rental and royalty payments due in subse-  
16 quent years; or

17 (2) refunded.

18 \* Sec. 7. AS 38.05.210(a) is amended to read:

19 (a) Labor shall be performed or improvements made annually on or  
20 for the benefit or development of each mining claim, leasehold lo-  
21 cation, and mining lease on state land except that where adjacent  
22 claims, leasehold locations, or mining leases are held in common, the  
23 expenditure may be made on any one claim, leasehold location, or  
24 mining lease. The commissioner shall establish the date of the com-  
25 mencement of the year during which the labor or improvements are to be  
26 performed. Labor shall be performed at the annual rate of \$100 [\$200]  
27 per claim or leasehold location, and \$100 for each partial or whole 40  
28 acres of each mining lease. If more work is performed than is re-  
29 quired by this section to be performed in any one year, the excess

1 [WORK UP TO A] value [OF \$800] may be applied against labor required  
2 to be done during the subsequent year or years, for as many as four  
3 years. Instead of performing annual labor, the holder of a claim,  
4 leasehold location, or mining lease may make a cash payment to the  
5 state equal to the value of the labor required by this subsection.

6 \* Sec. 8. AS 38.05.210(b) is amended to read:

7 (b) During the year in which [THE PERFORMANCE OF] annual labor  
8 is required or within 90 days after the close of that year, the owner  
9 of the mining claim, leasehold location, or mining lease, or some  
10 other person having knowledge of the facts shall record with the  
11 recorder of the district in which the claim, leasehold location, or  
12 mining lease is located a signed statement setting out the informa-  
13 tion, as may be required by the commissioner, concerning the annual  
14 labor of the preceding year, [AND] any labor in excess of that re-  
15 quired for the preceding year, and any payment of cash instead of  
16 annual labor. The statement, properly recorded, is prima facie evi-  
17 dence of the performance of the labor. The failure of one of several  
18 co-owners to contribute the proportion of the expenditures required  
19 for annual labor from the co-owner shall be treated in accordance with  
20 AS 38.05.215 - 38.05.235.

21 \* Sec. 9. AS 38.05 is amended by adding new sections to read:

22 Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining  
23 claim, leasehold location, or mining lease on land that has been  
24 selected by the state under Secs. 6(a) - (b) of the Alaska Statehood  
25 Act (P.L. 85-508, 72 Stat. 339) and that has been determined to be  
26 mineral in character under AS 38.05.206 shall pay, in advance, annual  
27 rental for the right to continue to hold the mining claim, leasehold  
28 location, or mining lease. The annual rental amount shall be based on  
29 the number of the years since a mining claim, a leasehold location, or

1 a mining lease's predecessor claim or leasehold location was first  
2 located, as follows:

3 Number of Years Since	Rental Amount Per	Rental Amount
4 First Located	Acre for Mining	for Each Mining
5	Leases	Claim or Leasehold
6		Location
7 0 - 5	\$ .50	\$ 20
8 6 - 10	\$1.00	40
9 11 - or more	\$2.50	100

10 (b) A claim, leasehold location, or mining lease located on or  
11 before August 31, 1989 is considered to have been first located on  
12 August 31, 1989 for purposes of determining the amount of rental under  
13 this section.

14 (c) The rental for each year shall be credited against the  
15 production royalty under AS 38.05.212 as it accrues for that year.

16 (d) The rental established under this section shall be revised  
17 each 10 years by the commissioner based on the consumer price index  
18 for Anchorage and published in regulations by the commissioner.

19 Sec. 38.05.212. PRODUCTION ROYALTY. (a) In exchange for and to  
20 preserve the right to extract and possess the minerals produced, the  
21 holder of a mining claim, leasehold location, or mining lease on land  
22 that has been selected by the state under Secs. 6(a) - (b) of the  
23 Alaska Statehood Act (P.L. 85-508, 72 Stat. 339) and that has been  
24 determined to be mineral in character under AS 38.05.206 shall pay a  
25 royalty on all minerals produced from land subject to the claim,  
26 leasehold location, or mining lease during each calendar year.

27 (b) The production royalty is two percent of net income as  
28 determined under AS 43.65.

29 (c) The commissioner shall adopt regulations to implement this

1 section and to provide for combined reporting and paying of production  
2 royalties for mining operations that include more than one mining  
3 claim, leasehold location, or mining lease.

4 \* Sec. 10. AS 38.05.240 is amended to read:

5 Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In  
6 AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical,  
7 geophysical, and airborne surveys conducted by qualified experts and  
8 verified by a detailed report filed in the recording district office  
9 in which the claim, leasehold location, or mining lease is located  
10 which sets out fully (1) the location of the work performed in re-  
11 lation to the point of discovery and boundaries of the claim, lease-  
12 hold location, or mining lease, (2) the nature, extent, and cost of  
13 it, and (3) the name, address, and professional background of the  
14 person conducting the work. The commissioner, by regulation, shall  
15 define the nature of acceptable survey work and the qualifications of  
16 a person competent to perform this work. The airborne surveys, how-  
17 ever, may not be applied as labor for more than two consecutive years  
18 or for more than a total of five years on any one mining claim, lease-  
19 hold location, or mining lease, and each of those surveys shall be  
20 nonrepetitive of any previous survey on the same claim, leasehold  
21 location, or mining lease.

22 \* Sec. 11. AS 38.05 is amended by adding a new section to read:

23 Sec. 38.05.243. DETERMINATION OF MINERAL CHARACTER. (a) Land  
24 on which a mining claim is located was not mineral in character at the  
25 time of state selection unless, on the date the state selected the  
26 land underlying the mining claim, the land was known to contain a  
27 valuable mineral deposit in sufficient quantities that a prudent  
28 person at that time would have expended time and resources to develop  
29 the mineral deposit with a reasonable belief that the minerals would

1 be marketable at a profit.

2 (b) Land underlying a mining claim does not contain a valuable  
3 mineral deposit unless, based on facts known at the date the land was  
4 selected by the state, the land

5 (1) contained an actual exposure of valuable minerals capa-  
6 ble of being marketed at a profit;

7 (2) was contiguous to an existing mining claim with an  
8 actual exposure of valuable minerals capable of being marketed at a  
9 profit;

10 (3) was within one mile from a placer deposit that has  
11 existing reserves that were producing or capable of producing valuable  
12 minerals at a profit if the mining claim is a placer claim; or

13 (4) was within one mile of a known mineral deposit that has  
14 produced or is capable of producing minerals at a profit if the mining  
15 claim is a lode claim.

16 \* Sec. 12. AS 38.05.265 is amended to read:

17 Sec. 38.05.265. ABANDONMENT. Failure to [(1)] properly record a  
18 certificate of location or a statement of annual labor, [OR (2)] file  
19 with the director within the time prescribed a lease application, [OR  
20 (3)] pay any required annual rental, pay any required production  
21 royalty [OR RECEIVE CREDIT FOR RENTAL], or [(4)] keep location bound-  
22 aries clearly marked [, ALL] as required by AS 38.05.185 - 38.05.275  
23 and by regulations adopted under these sections [,] constitutes aban-  
24 donment of all rights acquired under the mining claim [LEASE], lease-  
25 hold location, lease, or site involved, and the claim, location,  
26 lease, or site [IT] is subject to relocation by others. A [IF A  
27 LOCATION IS NOT RELOCATED BY ANOTHER PERSON WITHIN ONE YEAR AFTER THE  
28 FAILURE, THE] locator or claimant of an [THE] abandoned location [,]  
29 or a successor in interest [,] may not [RETURN TO] relocate the

1 location until one year after abandonment [IT AS THOUGH IT HAD NEVER  
2 BEEN LOCATED]. A statement of annual labor that [WHICH] does not  
3 accurately set out the essential facts is void and of no effect. If  
4 an annual rental or a royalty payment is deficient but is otherwise  
5 timely paid, abandonment does not result if full payment is made  
6 within

7 (1) the period prescribed by a deficiency notice from the  
8 commissioner; or

9 (2) 30 days after a final judgment establishing the amount  
10 due if the deficiency amount due was contested.

11 \* Sec. 13. AS 43.05.230 is amended by adding a new subsection to read:

12 (h) The commissioner shall, upon request, furnish to the Depart-  
13 ment of Natural Resources copies of tax returns, reports, documents  
14 filed under AS 43.65.010 - 43.65.060, and the department's deter-  
15 minations and workpapers. The Department of Natural Resources shall  
16 maintain the confidentiality that the department is required to extend  
17 to the returns, reports, documents, determinations, and workpapers  
18 furnished to the Department of Natural Resources under this subsec-  
19 tion.

20 \* Sec. 14. AS 38.05.210(d) is repealed.

21 \* Sec. 15. TRANSITION. (a) This Act applies to mining claims, lease-  
22 hold locations, and mining leases located before, on, or after the effec-  
23 tive date of this Act on land selected by the state under Secs. 6(a) - (b)  
24 of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339).

25 (b) The first annual rental payment due under AS 38.05.211 as enacted  
26 in sec. 9 of this Act is for the annual labor year beginning September 1,  
27 1989.

28 (c) The first production royalty payment due under AS 38.05.212 as  
29 enacted by sec. 9 of this Act is for production after December 31, 1989.

1 (d) The commissioner of natural resources shall adopt regulations to  
2 implement the changes made by this Act. The regulations take effect under  
3 the Administrative Procedure Act (AS 44.62) but not before August 31, 1989.  
4 The regulations may defer the date for the first annual rental payment due  
5 under AS 38.05.211 as enacted in sec. 9 of this Act.

6 \* Sec. 16. Section 15(d) of this Act takes effect immediately under  
7 AS 01.10.070(c).

8 \* Sec. 17. Except for sec. 15(d), this Act takes effect August 31,  
9 1989.