

CS FOR HOUSE BILL NO. 116(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/12/93
Referred: Rules

Sponsor(s): REPRESENTATIVES HANLEY, Phillips, Larson, Green, Parnell, Navarre

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to royalty gas contracts, amending the manner of determining
2 the royalty received by the state on gas production, and directing the
3 commissioner of natural resources to accept, under certain circumstances, the
4 contract price agreed to between a lessee of federal land and a gas or electric
5 utility as the value of the federal government's royalty share from natural gas
6 production on federal land from which the state is entitled under applicable
7 federal law to receive a share of the royalty on gas production; and providing
8 for an effective date."

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

10 * Section 1. AS 38.05.180(aa) is amended to read:

11 (aa) Within 90 days after the written request of a lessee of a lease issued under
12 this section or of a lessee of federal land from which the state is entitled under

1 applicable federal law to receive a share of the royalty on gas production, the
2 commissioner shall enter into an agreement with the lessee to use or accept the price
3 for the gas established in the contract between the lessee and a gas or electric utility
4 as the value of the state's royalty share of gas production sold by the lessee under the
5 contract

6 (1) but only if the primary function of the utility with which the
7 lessee has entered into the contract is to provide, either directly or by selling at
8 wholesale to another utility, gas or electricity to the general public, including
9 residential consumers, within the utilities' service areas, and the utility with which
10 the lessee has entered into the contract is not an affiliated interest, as that term
11 is defined in AS 42.05.990, with the lessee or with a subsequent purchaser of more
12 than 10 percent of the utility's gas or electricity; and

13 (2) unless the commissioner makes a written finding, based on clear
14 and convincing evidence, that

15 (A) [(1)] the contract price is unreasonably low;

16 (B) [(2)] the prospective reduction in royalty receipts would not
17 be balanced by increased benefits to in-state gas and electric consumers;

18 (C) [(3)] the lessee and the utility are related in management,
19 ownership, or other aspect; and

20 (D) [(4)] the contract price is not in the best interest of the
21 state.

22 * Sec. 2. AS 38.05.180(bb) is amended to read:

23 (bb) In (aa) of this section,

24 (1) "gas or electric utility" includes an electric cooperative organized
25 under AS 10.25, a municipal utility, and a gas or electric utility regulated under
26 AS 42.05; provided that if the contract gas is transmitted to consumers through a
27 pipeline and the gas utility either owns the pipeline or is related in ownership to the
28 owner of the pipeline, then the gas utility qualifies as a "gas or electric utility" within
29 the meaning of this paragraph only if it is bound or agrees to be bound by the
30 covenants set out in AS 38.35.120;

31 (2) "price for the gas established in the contract" includes tax

1 reimbursement amounts, deliverability and other charges, and other forms of
2 consideration paid by the gas or electric utility under the contract;

3 (3) "state's royalty share of gas production"

4 (A) includes payments on federal leases made to the state
5 under 30 U.S.C. 191;

6 (B) does not include the state's royalty share of gas production
7 from land patented to the state under

8 (i) [(A)] P.L. 84-830, 70 Stat. 709 (Alaska Mental
9 Health Enabling Act);

10 (ii) [(B)] 38 Stat. 1214 (Act of March 4, 1915); or

11 (iii) [(C)] 43 U.S.C. 1635 in settlement of the claims of
12 the state under 38 Stat. 1214.

13 * Sec. 3. AS 38.05.180 is amended by adding a new subsection to read:

14 (cc) The provisions of (aa) of this section do not prohibit the commissioner
15 from accepting any payment on a federal lease tendered by the federal agency
16 responsible for determination and transmittal of the payment to the state under 30
17 U.S.C. 191 or otherwise due the state as the state's royalty share of gas production
18 irrespective of the state's acceptance of the use of the contract price for purposes of
19 determining royalty share on gas production under that subsection.

20 * Sec. 4. APPLICATION TO ROYALTY FROM EXISTING FEDERAL LEASES. (a)
21 Notwithstanding AS 38.05.180(aa) and 38.05.180(bb), the provisions of this section apply to
22 the state's share of royalty production of gas produced after January 2, 1959, and before the
23 effective date of this section from a lease of oil or gas rights entered into under applicable
24 federal law.

25 (b) If a lessee of a lease for federal land from which the state is entitled under
26 applicable federal law to receive a share of the royalty on gas production makes a written
27 request within 90 days of the effective date of this section, the commissioner shall enter into
28 an agreement with the lessee to accept the price for the gas established in the contract between
29 the lessee and a gas or electric utility as the value of the state's royalty share of gas
30 production sold by the lessee under the contract

31 (1) but only if the primary function of the utility with which the lessee has

1 entered into the contract is to provide, either directly or by selling at wholesale to another
2 utility, gas or electricity to the general public, including residential consumers, within the
3 utilities' service areas, and the utility with which the lessee has entered into the contract is not
4 an affiliated interest, as that term is defined in AS 42.05.990, with the lessee or with a
5 subsequent purchaser of more than 10 percent of the utility's gas or electricity; and

6 (2) unless the commissioner makes a written finding, based on clear and
7 convincing evidence, that

8 (A) the contract price is unreasonably low;

9 (B) the reduction in royalty receipts is not balanced by increased
10 benefits to in-state gas and electric consumers;

11 (C) the lessee and the utility are related in management, ownership, or
12 other aspect; and

13 (D) the contract price is not in the best interest of the state.

14 (c) The provisions of (a) and (b) of this section do not prohibit the commissioner from
15 accepting any payment on a federal lease tendered by the federal agency responsible for
16 determination and transmittal of the payment to the state under 30 U.S.C. 191 or otherwise
17 due the state as the state's royalty share of gas production irrespective of the state's
18 acceptance of the use of the contract price for purposes of determining royalty share on gas
19 production under those subsections.

20 (d) In this section,

21 (1) "gas or electric utility" includes an electric cooperative organized under
22 AS 10.25, a municipal utility, and a gas or electric utility regulated under AS 42.05; however,
23 if the contract gas is transmitted to consumers through a pipeline and the gas utility either
24 owns the pipeline or is related in ownership to the owner of the pipeline, then the gas utility
25 qualifies as a "gas or electric utility" within the meaning of this paragraph only if it is bound
26 or agrees to be bound by the covenants set out in AS 38.35.120;

27 (2) "price for the gas established in the contract" includes tax reimbursement
28 amounts, deliverability and other charges, and other forms of consideration paid by the gas
29 or electric utility under the contract;

30 (3) "state's royalty share of gas production" includes payments on federal
31 leases made to the state under 30 U.S.C. 191.

- 1 * **Sec. 5. RETROSPECTIVE EFFECT OF SECTION 4. Section 4 of this Act is**
2 retroactive to January 3, 1959, and applies to the federal government's royalty share from
3 natural gas production due the state after January 2, 1959.
- 4 * **Sec. 6. This Act takes effect immediately under AS 01.10.070(c).**