

517

HRES

HB 854

(NOTEBOOK)

0072

SEC. C

construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved." (§ 1 art VII ch 169 SLA 1959; am § 14 ch 61 SLA 1960; am § 1 ch 42 SLA 1966; am § 3 ch 240 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "§§ 315 — 325 of this chapter, §§ 45 — 120 of this chapter, or ch. 50 of this title except as provided in AS 38.50.050 is" for "§§ 315 — 325 of this chapter or §§ 45 — 120 of this chapter, except for those lands originally acquired by purchase, exchange, condemnation, gift, escheat or foreclosure are" near the beginning of the section.

Legislative committee report. — For report on ch. 42, SLA 1966 (HB 387 am), see 1966 House Journal, p. 492.

Chapter 19, SLA 1977 held not invalid. — Chapter 19, SLA 1976, authorizing a three-way exchange of land between the state of Alaska, the United States government and a regional corporation of Alaska Natives, was not invalid on the ground that it waived the provisions of this section restricting the state's right to alienate minerals and former AS 38.95.060 authorizing exchanges of land with native corporations on the basis of equal value. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630 (1977).

Sec. 38.05.127. Access to navigable or public waters. (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the Department of Natural Resources shall,

(1) under regulations, determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way, or both, reasonably necessary to insure free access to and along the body of water, unless the department finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The Department of Natural Resources shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights. (§ 2 ch 117 SLA 1976)

Editor's note. — Section 1, ch. 117, SLA 1976, provides: "Intent. It is the intent of this Act to implement the provisions of art. VIII, sec. 14, Alaska State Constitution, relating to access to the navigable or public waters of the state."

Legislative committee report. — For report on ch. 117, SLA 1976 (HCS 2d CSSB 215), see 1976 Senate Journal, p. 452; 1976 House Journal, p. 1296.

Sec. 38.05.130. Damages and posting of bond. No rights shall be exercised by the state, its lessees, successors or assigns under the

reservation as set out in § 125 of this chapter or until the state, its lessee, successors, or assigns make provisions to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option contract or lease for mining coal or lease for extracting petroleum or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner payment for damages, and may institute legal proceedings in a court where the land is located, as may be necessary to determine the damages which the owner may suffer. (§ 2 art VII ch 169 SLA 1959; am § 15 ch 61 SLA 1960)

Article 6. Leasing of Mineral Lands.

Section

- 135. Generally
- 137. Leasing agreements
- 140. Limitations
- 145. Leasing procedure
- 150. Coal
- 155. Phosphates
- 160. Oil shale
- 165. Sodium
- 170. Sulphur

Section

- 175. Potassium
- 180. Oil and gas
- 181. Geothermal resources
- 182. Royalty on natural resources
- 183. Sale of royalty
- 184. Limitation on oil and gas leases in certain areas, and reacquisition of leases

Sec. 38.05.135. Generally. (a) Except as otherwise provided, valuable minerals deposits in lands belonging to the state shall be open to exploration, development, and the extraction of minerals. All lands, together with tide, submerged, or shorelands, to which the state holds title to or to which the state may become entitled, may be obtained by permit or lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by §§ 135 — 181 of this chapter, lands may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state. In unproven areas the commissioner may offer additional incentives, including a reduction of royalty to a minimum of five per cent in the case of oil and gas, and other terms in and granting permit or lease for exploration and development whenever it appears to be in the best interests of the state to do so.

(b) When minerals are to be leased on a competitive basis, in addition to any other notice given, notice shall also be given as provided in §§ 305 and 345 of this chapter. If land is to be made available for noncompetitive mineral leasing, notice of the proposed action shall also be given as provided in §§ 305 and 345 of this chapter. After the notice of

noncompetitive leasing has been made as required in this subsection, notice of the subsequent issuance of a noncompetitive lease for the land involved shall be made by mail not less than 30 days before the issuance of the lease only to those who have requested the notice. (§ 1 art VIII ch 169 SLA 1959; am § 1 ch 30 SLA 1964; am § 1 ch 91 SLA 1967; am § 2 ch 71 SLA 1971; am § 10 ch 257 SLA 1976)

Effect of amendment. — The 1976 amendment added present subsection (b).

Cited in Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964); Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Am. Jur., ALR and C.J.S. references. — 24 Am. Jur., Gas and Oil, §§ 32 to 102; 36 Am. Jur., Mines and Minerals, §§ 11 to 22,

39 to 62, 65 to 98, 139 to 142; 42 Am. Jur., Public Administrative Law, § 111; 4th Am. Jur., States, Territories and Dependencies, §§ 57 to 61.

Validity of prohibition or regulations of removal or exploitation of oil, minerals, soil, sand, gravel, stone or natural products within municipal limits, 168 ALR 1188.

73 C.J.S. Public Lands § 259.

Sec. 38.05.137. Leasing agreements. The commissioner is authorized to enter into cooperative mineral leasing agreements with the United States regarding lands which are the subject of a title dispute between federal and state authorities. Any such lease need not conform to the provisions of state law applicable to state leases issued under the authority of this chapter. (§ 2 ch 30 SLA 1964)

Sec. 38.05.140. Limitations. (a) No person may take or hold coal leases or permits during the life of coal leases on state lands exceeding an aggregate of 46,080 acres, except that a person may apply for coal leases or permits for acreage in addition to 46,080 acres, not exceeding a total of 5,120 additional acres of state land. The additional area applied for shall be in multiples of 40 acres and the application shall contain a statement that the granting of a lease for additional lands is necessary for the person to carry on business economically and is in the public interest. On the filing of the application, the coal deposits in the lands covered by the application shall be temporarily set aside and withdrawn from all other forms of disposal provided under §§ 135 — 181 of this chapter.

(b) The commissioner shall, after posting notice of the pending application in the local land office, conduct public hearings on the application for additional acreage. After public hearings, to the extent he finds to be in the public interest and necessary for the applicant in order to carry on business economically, the commissioner may, under regulations he prescribes, permit the person to take or hold coal leases or permits for an additional aggregate acreage of not more than 5,120 acres.

(c) No person may take or hold at one time phosphate leases on state lands exceeding in the aggregate 10,240 acres. No person may take or hold sodium leases or permits during the life of sodium leases on state lands, exceeding in the aggregate acreage 5,120 acres except that the

commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. No person may take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged lands, and 500,000 acres on all lands other than tide and submerged lands, including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease.

(d) The commissioner, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, phosphate, sodium, potassium, sulphur, and geothermal resources and in the interest of conservation of natural resources, after public hearing, or, when the state's title to land beneath navigable waters has been legally challenged by the United States and litigation initiated, may waive, suspend, refund, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion of a leasehold segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the lease cannot be successfully operated under its terms. If the commissioner, in the interest of conservation, directs or assents to the suspension of operations and production under a lease granted, the payment of acreage rental or of minimum royalty prescribed by the lease may be suspended during the period of suspension of operations and production. The term of the lease shall be extended by adding the period of suspension to the lease.

(e) The provisions of (d) of this section that apply to waiver, suspension, refund or reduction of rental of minimum royalty apply to rental or minimum royalty paid before or after June 19, 1970 on any lease covering land beneath navigable waters which, according to the records of the division of lands, is in effect on June 19, 1970.

(f) The submerged and shorelands lying north of 57°, 30 minutes north latitude and east of 159°, 49 minutes west longitude within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve. Within the Bristol Bay Fisheries Reserve no surface entry permit to develop an oil or gas lease may be issued on state owned or controlled land until the legislature by appropriate resolution specifically finds that the entry will not constitute danger to the fishery. (§ 2 art VIII ch 169 SLA 1959; am § 1 ch 68 SLA 1969; am §§ 1, 2 ch 208 SLA 1970; am §§ 3, 4 ch 71 SLA 1971; am § 1 ch 102 SLA 1972)

Legislative committee report. — For report on ch. 68, SLA 1969 (HB 3030), see 1969 House Journal, p. 572.

Sec. 38.05.145. **Leasing procedure.** (a) Deposits of coal, phosphates, oil shale, sodium, potassium, oil, gas, geothermal resources and state lands containing these deposits are subject to disposition under rules and regulations, recommended by the director and adopted by the commissioner, and the provision of §§ 145 — 181 of this chapter. In applying the acreage limitations the commissioner may apply the rule of approximation. The uses of the rule of approximation made before March 31, 1960, by the commissioner are ratified.

(b) If the state selects or otherwise acquires land other than shorelands, title to which was in the federal government and which, at the effective date of the selection or acquisition, is subject to a valid existing offer for a noncompetitive United States oil and gas lease, or application for a prospecting permit or noncompetitive mining lease, for coal, phosphates, sulphur, oil shale, sodium, or potassium under the federal Act of February 25, 1920 (41 Stat. 437 as amended), or for a noncompetitive United States geothermal lease, or application for a prospecting permit or noncompetitive lease under the federal Act of December 24, 1970 (84 Stat. 1566), the offeror or applicant for the federal permit or lease, if a qualified applicant hereunder, shall be considered the first qualified applicant for a state noncompetitive oil and gas lease, noncompetitive geothermal lease, prospecting permit, or noncompetitive mining lease and is entitled to a state noncompetitive lease or permit upon compliance with the provisions of the regulations covering applications within 60 days after receipt of written notice from the commissioner of selection or acquisition. These priorities are not effective if the land covered by the federal offers or applications is classified by the commissioner as competitive land within 90 days after the selection of the land is finally approved by the Secretary of the Interior or the land is otherwise acquired. (§ 3 art VIII ch 169 SLA 1959; am § 16 ch 61 SLA 1960; am § 3 ch 30 SLA 1964; am §§ 5, 6 ch 71 SLA 1971; am § 33 ch 71 SLA 1972)

Revisor's note (1971). — In § 6, ch. 71, SLA 1971, the first sentence of AS 38.05.145(b) was split into two sentences. Since that would leave the first sentence incomplete and meaningless, and appears to have been a manifest clerical error, the two have been rejoined. Also, the missing "or" has been inserted before "for a noncompetitive United States geothermal lease" in that sentence. The federal Act of

February 25, 1920, referred to is PL 66-146; the federal Act of December 24, 1970, referred to is PL 91-581 (the Geothermal Steam Act of 1970).

Legislative committee report. — For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898.

Applied in *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Sec. 38.05.150. **Coal.** (a) The commissioner may, and upon the petition of a qualified applicant, shall divide coal lands or the deposits of coal owned by the state into leasing tracts of 40 acres each, or multiples of 40 acres, and in the form which will permit the economical mining of the coal in the tract.

(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.

(c) Where prospecting or exploration work is necessary to determine the existence or workability of coal deposits in an unclaimed and undeveloped area, the commissioner may issue to qualified applicants prospecting permits for a term of two years, not exceeding 5,120 acres. If within the period of two years the permittee shows to the commissioner that the land contains coal in commercial quantities and submits a satisfactory mining plan for the coal's recovery, the permittee shall be entitled to a lease for all or part of the land in his permit. A coal prospecting permit may be extended by the commissioner for a period of two years, if he finds that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons in the opinion of the commissioner warranting extension.

(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.

(e) Each lease shall be for an indeterminate period upon condition of diligent development and continued operation of the mine, except when operation is interrupted by strikes, the elements, or casualties not attributed to the lessee. (§ 3(1) art VIII ch 169 SLA 1959; am § 17 ch 61 SLA 1960; am § 1 ch 71 SLA 1966; am §§ 2, 3 ch 88 SLA 1969)

Legislative committee reports. — For 1969 (HB 303), see 1969 House Journal, p. 572.
report on ch. 71, SLA 1966, see 1966 House Journal, p. 491. For report on ch. 68, SLA

Sec. 38.05.155. Phosphates. (a) The commissioner may lease to qualified applicants lands belonging to the state which contain deposits of phosphates and associated and related minerals, when in his judgment it is in the public interest to do so. The commissioner may lease land

included in a permit may not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of potassium compounds have been discovered by the permittee within the area covered by his permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit, at a royalty of not less than two per cent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market. The commissioner may lease lands known to contain valuable deposits of potassium compounds which are not covered by permits or leases through advertisement, competitive bidding, or other methods as he adopts by general regulation. The area covered by the lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon payment by the lessee of a royalty of not less than two per cent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, and the payment in advance of a rental of 25 cents an acre for the first calendar year or fraction of it, 50 cents an acre for the second calendar year, third calendar year, fourth calendar year, and fifth calendar year, and \$1 an acre a year thereafter during the continuance of the lease. The rental for any one year shall be credited against royalties accruing for that year.

(c) Each lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease. (§ 3(6) art VIII ch 169 SLA 1959)

Sec. 38.05.180. Oil and gas. (a) All tide and submerged lands, mental health lands, school lands, and university lands shall be leased by competitive bidding, and whenever oil or gas is discovered in commercial quantities, the commissioner shall determine the extent of the area of lands in addition to tide, submerged, mental health lands, school, or university lands in the same general area of the discovery well which, by reason of the discovery, the commissioner reasonably believes to be capable of producing oil or gas, and the additional lands shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations, in units of not exceeding 2,560 acres (except that tide and submerged lands shall be leased in units of not exceeding 5,760 acres), which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the commissioner and of such royalty as may be fixed in the lease which shall not be less than 12½ per cent in amount or value of the production removed or sold from the lease. All lands other than those above provided to be leased by competitive bidding may be leased competitively or noncompetitively as determined by the commissioner to be in the best interests of the state. Noncompetitive leases shall be issued in units of not exceeding 2,560 acres in any one lease. Noncompetitive leases shall be conditioned upon the payment by the lessee of a royalty of 12½ per

cent in amount or value of the production removed or sold from the lease. Competitive leases issued under this subsection shall be for 10 years except that in the Cook Inlet sedimentary basin, leases shall be for a primary term of not more than 10 years and not less than five years at the discretion of the commissioner, and shall continue so long thereafter as oil or gas is produced in paying quantities. Noncompetitive leases issued under this subsection shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, such operations to include re-drilling, sidetracking or other means necessary to reach the originally proposed bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. If all or part of the lands covered by the lease are lands that have been selected by the state under laws of the United States granting lands to the state and a patent has not been issued on them, a conditional lease may be issued. However, no term extension may be granted for the period during which the lease was conditional.

(b) An oil or gas lease issued under this section which is subject to termination by reason of cessation of production does not terminate if, within 60 days after production ceases, reworking or drilling operations are commenced on the land under lease and are thereafter conducted with reasonable diligence during the period of nonproduction. No lease issued under this section expires because operation or production is suspended under an order, or with the consent of the commissioner. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities expires because the lessee fails to produce oil or gas, unless the licensee is allowed a reasonable time within which to place the well on a producing status. After producing status is established, production shall continue on the leased premises until suspension of production is allowed by the commissioner.

(c) Upon the expiration of the initial five-year term of a noncompetitive lease maintained in accordance with applicable requirements and regulations, the record title holder is entitled to a single extension of the lease, unless otherwise provided by law. A noncompetitive lease on lands not determined to be competitive lands shall be extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities. A noncompetitive lease on lands determined to be competitive lands shall be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities. A noncompetitive lease extended under this paragraph is subject to the rules and regulations in force at the expiration of the initial five-year term of the lease. No extension may be granted, however, unless within a period of 90 days before the expiration date

an application for extension is filed by the record title holder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval.

(d) The commissioner may provide for extension of the term of a lease whether competitive or noncompetitive, if all or part of the lease is included in an approved unit plan or program of secondary recovery operation to bring about or restore production.

(e) All noncompetitive oil or gas leases issued under this section shall be conditioned upon the payment by the lessee in advance of an annual rental of 50 cents an acre or fraction of an acre. All competitive oil and gas leases issued under this section shall be conditioned upon the payment of an annual rental, before discovery on the leased lands, of \$1 an acre or fraction of an acre. A minimum royalty of \$1 an acre instead of rental is payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

(f) Repealed by § 7 ch 30 SLA 1964.

(g) An offeror for a federal oil and gas lease whose lease was issued after January 2, 1959, or a qualified applicant for a preference right under the Act of July 3, 1958, (72 Stat. 322) whose application for a preference right was filed before January 3, 1959, has a preference right to a state lease on the shorelands included within the exterior boundaries of the federal lease.

(h) If lands described in the offer for a federal lease are covered by nontidal water and are excluded from the federal lease on the basis of navigability, the state shall, upon application within 60 days after notice of the exclusion, if not previously filed, grant a preference lease for the areas excluded, carrying the same provisions as an ordinary state lease on the same lands, except that the term of the state lease shall conform in all respects to that of the adjoining federal lease including extended terms. The state shall issue a shorelands preference lease where a federal lease has been issued before March 31, 1960, and application is made to the state before July 1, 1960. Where a federal lessee or offeror failed before January 3, 1959, to file a proper application for a preference right under the Act of July 3, 1958, he may apply for a state preference lease under this section, subject to the rights of intervening applicants.

(i) Where the lands are classified as competitive, they shall be leased by competitive bidding. The holder of the preference right has 10 days after receipt of notice in which to submit an amount equal to the highest bid plus the rental for the first year.

(j) Upon timely application as provided by regulation, the state shall issue to the holder of a federal lease a state shorelands lease covering land within the exterior boundaries of the federal lease which has been excluded on the basis of navigability or which are later administratively or judicially determined to be "shorelands." The term of every shoreland lease shall conform to that of the adjacent federal lease including

extended terms. The authority of the state to classify the lands as competitive or noncompetitive shall not be impaired.

(k) Instead of the foregoing procedure, the federal lessee or his assignee may, at his option, exercise his preference right for a state lease on the shorelands included within the exterior boundaries of his federal lease by applying to the division of lands, Department of Natural Resources. If, at the time of applying, the lands are classified as noncompetitive, the state shall, upon application, issue a lease covering whatever shorelands are included within the exterior boundaries of the federal lease. If, at the time of applying, the shorelands included in the federal lease are classified as competitive lands, the lands shall be leased by competitive bidding. The competitive lease shall be issued to the federal lessee or his assignee upon payment to the state of an amount equal to the highest bid for the lease, plus the rental for the first year, payment to be made within 10 days after the lessee's or assignee's receipt of written notice from the director of the division of lands of the amount of the highest bid. These leases, whether competitive or noncompetitive, shall carry the same conditions as an ordinary state lease on the same lands, except that the term of the state lease shall conform to that of the adjoining federal lease, including extended terms, and shall terminate if the federal lease is terminated for any reason. The lease shall provide for annual rental at the rate of \$100 a unit of 640 acres or part thereof of the lands included within the federal lease until agreement is reached between the state and the Secretary of the Interior of the United States, or his authorized representative, as to the actual area of the shorelands included in the federal lease, and as to the apportionment between the state and federal government of the rental theretofore paid under the federal lease.

(l) The lease of a record lessee of a federal oil and gas lease who filed, or whose predecessor in interest filed, between July 3, 1958, and January 3, 1959, a proper preference right application under the Act of July 3, 1958, (72 Stat. 322) to have included in the lease the shorelands within the exterior boundaries of the lease and which lease or any part of it has terminated or failed as to the shorelands due to mispayment of or failure to pay the required rental as to the shorelands in advance of the anniversary date of the federal lease, shall be revived and reinstated as to the shorelands upon payment to the Bureau of Land Management of the United States Department of the Interior or to the state of all rental payable as to the shorelands under the lease since January 3, 1959. The rights under this section terminate 60 days after receipt of notice from the director, but not later than March 31, 1961. Nothing herein operates to extend a lease beyond its stated term.

(m) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, (whether or not the part is then subject to a cooperative or unit plan of development or operation), lessees and their representatives may unite with each other, or jointly or separately with

others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, whenever determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, alter, change, or revoke drilling, producing, rental minimum royalty, and royalty requirements of the leases and make regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as he determines necessary or proper to secure the proper protection of the public interest. The commissioner may provide that oil and gas leases issued under this section shall contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and he may prescribe a plan under which the lessee shall operate. The plan shall adequately protect all parties in interest, including the state.

(n) A plan authorized by (m) of this section, which includes lands owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency with authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under § 140 of this chapter. The provisions of this section concerning cooperative or unit plans are in addition to, and do not affect AS 31.05.

(o) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of § 140 of this chapter.

(p) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other lands, whether or not owned by the state, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement shall be considered as operations or production as to each lease committed to the agreement.

(q) The commissioner may, on conditions which he prescribes, approve drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, whenever, in his discretion, the conservation of natural products or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling, or development contracts, and interests under them are excepted in determining holding or control under § 140 of this chapter.

(r) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas

whether or not produced from state lands, in lands leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced. A lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(s) Each oil or gas lease issued by the state shall contain a provision requiring the lessee to furnish the Department of Labor a quarterly report regarding the employment on the leased property of state residents. The commissioner of labor shall promulgate regulations necessary to carry out the provisions of this subsection. (§ 3(7) art VIII ch 169 SLA 1959; am § 18 ch 61 SLA 1960; am § 1 ch 124 SLA 1962; am §§ 4—7 ch 30 SLA 1964; am § 20 ch 70 SLA 1964; am § 2 ch 91 SLA 1967; am § 1 ch 65 SLA 1969; am § 1 ch 86 SLA 1970)

Revisor's note (1970). — In ch. 86, SLA 1970, subsection (s) of AS 38.05.180 was incorrectly designated (t).

Cross references. — See note to AS 38.05.020. As to establishment of drilling units for pools, see AS 31.05.100. As to gross production tax, see AS 43.55.010.

Purpose of subsection (a). — The provisions of subsection (a) of this section were intended to insure that leases on valuable oil and gas producing state lands will be made available to the public on a fair and equitable basis, that the state will be adequately compensated for its natural resources, and that the state's resources are developed in an orderly fashion. For the commissioner to decide that these purposes are furthered by providing for bidding by cash bonus cannot be said to be unreasonable. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

And construction thereof. — The only reasonable construction that can be placed on subsection (a) of this section is that the legislature intended to give the commissioner broad authority to determine the kind of bonus he will accept. The legislature at the time it passed subsection (a) was undoubtedly aware that under competitive bidding procedures different forms of bonuses might be offered. It did not itself prescribe a particular form, but instead provided that competitive bidding shall be "under general regulations," and that lands shall be leased upon the payment of "such bonus as may be accepted by the commissioner." The plain language of the statute shows that royalties were to be

fixed independently of the acceptance of the highest bonus. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Power to change law respecting lease extensions is vested in state. — The governmental power to change the law respecting the granting of lease extensions, vested in Congress prior to statehood and preserved by § 6(k) of the Alaska Statehood Act, became vested in the state when the lands subject to the lease were granted to the state as its property. *Kirkpatrick v. Commissioner, Dep't of Natural Resources*, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

And has been exercised by the Alaska Land Act. — The state has exercised its power to change the law respecting lease extensions by the Alaska Land Act and by regulations adopted under its authority. *Kirkpatrick v. Commissioner, Dep't of Natural Resources*, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

Subsection (c) has no application to pre-statehood federal leases. — Read in the context of article 6 of this chapter, it becomes apparent that subsection (c) of this section, as to extensions, relates only to leases issued by the state under the authority of the Alaska Land Act, and is not pertinent with respect to pre-statehood federal leases. *Kirkpatrick v. Commissioner, Dep't of Natural Resources*, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

Subsection (c) of this section, relating to extensions of state oil and gas leases, has no application to federal leases of lands

granted to the state by the Alaska Statehood Act. Hence, appellant had no right to an extension of its federal lease, but only a right, which it was granted under the commissioner's regulations, to a state lease for a period of two years following expiration of the original five-year term of its federal lease. *Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).*

Nor to lands classified by Statehood Act as competitive. — The language of this section is not directed to a situation where lands have been classified as competitive by the Alaska Land Act itself, and where there is no room for the exercise of the commissioner's authority to make classifications. *Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).*

Effect of Alaska Statehood Act and statutes on pre-statehood federal leases. — For effect of the Alaska Statehood Act and statutes enacted by the Alaska State Legislature on oil and gas leases of Alaska lands issued by the United States Department of the Interior while Alaska was a territory of the United States, see *Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).*

Land classification orders of the commissioner are not within the meaning of "regulation" under the Administrative Procedure Act (AS 44.62.180 — 44.62.250) and are thus not subject to it. *Bradley v. State, 2 Alas. L.J. No. 6, p. 88 (June-July, 1964).*

State's reclassification of lands in the Cook Inlet Basin for competitive oil and gas leasing under subsection (a) of this section upheld in *Bradley v. State, 2 Alas. L.J. No. 6, p. 88 (June-July, 1964).*

For full treatment and explanation of oil and gas leasing procedures under Alaska law, see *Bradley v. State, 2 Alas. L.J. No. 6, p. 88 (June-July, 1964).*

"Commercial quantities" construed. — See *Pan American Petroleum Corp. v. Shell Oil Co., Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969).*

The words "bonus" and "royalty" in their broadest concepts and meanings are conflicting and overlapping. On the other hand, when it is necessary that they be distinguished, there is a narrower concept of the two terms as they are ordinarily and commonly used and understood in the oil and gas industry in which they do not conflict but are harmonious. In this

narrower sense, a reservation or a payment of a part or percentage of production under a lease which is to continue throughout the life of the lease is regarded as "royalty," and a sum certain to be paid in cash or out of production is regarded as "bonus." *Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

In its broadest sense, "bonus" is any consideration given for a lease over and beyond the usual $\frac{1}{4}$ th royalty, whether the additional consideration be paid or payable and whether paid in cash or payable out of production. *Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

In its broadest aspect, "royalty" is a share of the product or profit reserved by the owner for permitting another to use the property. In this broad sense, a sum certain to be paid out of production, although "bonus" in that it is consideration in addition to the usual $\frac{1}{4}$ th royalty, would also be "royalty." *Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

Choosing concept of "bonus" most commonly encountered. — In choosing the concept of "bonus" most commonly encountered in the oil and gas industry, defendants acted neither unreasonably nor arbitrarily. *Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

Requiring compensation for lease immediately upon award of lease. — It is not unreasonable for the commissioner to determine that it is in the state's best interest to receive compensation for the leases immediately upon the award of the lease, rather than to wait for uncertain sums to arrive in the form of premium royalties. *Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

Considering only cash portions of bids. — In considering only the cash portion of plaintiffs' 33 bids, defendants acted pursuant to valid regulations which provided that a lease would be awarded to the bidder offering the highest cash bonus. Since other bids on the 33 tracts contained higher cash offerings than plaintiffs' bids, the defendants acted properly in determining that the high cash bids on those 33 tracts were the apparent high bids, not plaintiffs' bids. *Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

Royalty legislation on state oil and gas leases is a matter within the paramount jurisdiction of the state. The conservation

of oil and gas is a matter within the authority of the states. 1969 Op. Att'y Gen., No. 6.

The royalty provisions of a mineral leasing act are related to conservation of natural resources. 1969 Op. Att'y Gen., No. 6.

The United States, under the 10th amendment to the Constitution of the United States, has no authority to legislate on state royalty provisions and state oil and gas leases. 1969 Op. Att'y Gen., No. 6.

An overriding gross royalty of 2% of all proceeds from any state and federal lands conflicts with the Statehood Act and the province of the Alaska state legislature. 1969 Op. Att'y Gen., No. 6.

A 2% overriding gross royalty cannot apply to a federal lease on public lands within the State of Alaska. 1969 Op. Att'y Gen., No. 6.

A 2% overriding gross royalty cannot apply to a State of Alaska oil and gas lease

issued pursuant to this section. 1969 Op. Att'y Gen., No. 6.

Commissioner empowered to grant royalty reduction. — This section empowers the commissioner of the Department of Natural Resources, not the director, division of lands, to grant the specified royalty reduction. *Union Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 526 P.2d 1357 (1974).

Cited in *Shell Oil Co. v. Pan American Petroleum Corp.*, 5 Alas. L.J. No. 11, p. 230 (Nov., 1967).

ALR reference. — Validity of compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 ALR2d 434.

Sec. 38.05.181. Geothermal resources. (a) Purpose. The legislature finds and declares that

(1) the people of Alaska have an interest in the development of the state's geothermal resources potential for

(A) use in the generation of electrical power that may reduce the state's dependence on fossil fuel power plants that seriously pollute the atmosphere in a number of areas;

(B) the production of geothermal steam that may provide central heat for urban areas close to geothermal areas;

(C) the production of valuable minerals and other byproducts associated with geothermal steam and accompanying brines; and

(D) the distillation of fresh water;

(2) the state, through the Department of Natural Resources and its division of lands, should exercise its authority to encourage the exploration for, discovery and production of, geothermal resources in the public interest to

(A) encourage maximum economic recovery of this potentially important natural resource and prevent its waste;

(B) ensure that the exploration for, and production of, geothermal resources, and the disposal of wastes from them, are carried on in a way that will safeguard life, health, property, public welfare and the environment; and

(C) preserve the state's natural, scenic values especially in those areas where geothermal resources are or may be found; although the need to develop new sources of energy rapidly is becoming urgent, every effort also must be made to protect those hot springs and geysers that are among nature's scenic wonders.