

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 86/2

9008 SENATE RESOURCES

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 207(RES)

1 Page 4, line 30, through page 5, line 2:

2 Delete all material and insert:

3 "(8) shall

4 (A) make and publish a preliminary findings and
5 determination on the royalty increase, decrease, or other adjustment
6 application; if the preliminary findings and determination concerns a
7 royalty increase, decrease, or other adjustment under (1)(A) of this
8 subsection, the preliminary findings and decision shall also be presented
9 to the governor for the governor's approval or disapproval; the governor
10 may not delegate a decision to approve or disapprove a preliminary
11 findings and decision under this subparagraph;

12 (B) give reasonable public notice of the preliminary findings
13 and determination; and

14 (C) invite public comment on the preliminary findings and
15 determination during a 30-day period for receipt of public comment;"

16 Page 7, line 32, after "determination":

17 Insert "and present it to the governor for the governor's approval or disapproval;
18 the governor may not delegate a decision to approve or disapprove a final findings and
19 decision presented under this subparagraph;

20 Page 8, line 2, after "adjustment":21 Insert "If approved by the governor,"

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 609
Juneau, Alaska 99801-2103

MEMORANDUM

May 2, 1995

SUBJECT: Amendment B 3 to draft SCS CSIB 207(Res), authorizing the commissioner of natural resources to make adjustments of royalties payable by state lessees on oil and gas production (Work Order No. 9-G110039B3)

TO: Senator Loren Lemman, Chair
Senate Resources Committee
ATTN: Annette Kretzer

FROM: Jack Chenoweth
Legislative Council

I didn't really understand the first part of your second amendment, relating to the treatment of confidential data. My sense of this was that the information was to be kept confidential but could be released to the members in attendance at the Legislative Budget and Audit meeting. See my handling of it in proposed (J16HB)

JHC:kb
95-126 kb

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2079
Mail Stop 1101


110 Seward Street, Suite 809
Juneau, Alaska 99801-2103

MEMORANDUM

May 3, 1995

SUBJECT: Amendment B6 to draft SCS CSHB 207(Res), authorizing the commissioner of natural resources to make adjustments of royalties payable by state lessees on oil and gas production (Work Order No. 9-Gif(0)9B6)

TO: Senator Loren Leman, Chair
Senate Resources Committee
ATTN: Annette Kretzer

FROM: Jack Chepman 
Legislative Counsel

You did not ask that I do so, but I need to ask whether, in light of this amendment, the two additional references to "marketing economics" appearing on page 1 at line 7 and on page 4 at line 26 should now also be deleted?

JHC:LB
95-127:LB

Enclosure



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

MEMO

TO: Jack Chenoweth, Attorney
Legal Services
via fax: 2029 two pages

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: May 2, 1995 6:40 p.m.

RE: Additional Amendments to HB 207 Draft version B

Amendment #5) Page 4, Line 14:
after production,

and transportation (and marketing) of oil and

Amendment #6) Sections 3, 4 and 5: DELETE:

The commissioner may not (increase or) decrease
(or otherwise adjust) royalty on leases in connection with a cooperative or unit plan
except as provided in (j) of this section.

ONLY OTHER UNRESOLVED ISSUE: handling of confidential information by "staff to
L&A committee". After reviewing the statutes covering L&A, it seems superfluous to
say that information companies want to remain confidential from the public is confidential
to staff and agents of the L&A Committee. Or does there have to be assurance for the
companies that information that they deem to be confidential will be treated confidentially
by the staff or contractors of the L&A committee?



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

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716 W 4th Avenue
Anchorage AK 99501-2133

MEMO

TO: Jack Chenoweth, Attorney
Legal Services
via fax: 2029 two pages
FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee
DATE: May 2, 1995
RE: Amendments to HB 207 Draft version B

I need the following by 10.00 a.m. Wednesday. I will be in my office (x4907) until probably 6 p.m.. Please draft the following amendments to HB 207 work draft version GH0039AB:

Amendment #1) For non-producing fields under 38.05.180(j)(1)(A), the preliminary and final findings and determinations must be signed by the Governor. The Governor cannot delegate this responsibility. You may have to amend the commissioner's statutory authority under Title 38, also. This requirement does not apply to (B) and (C) (uneconomic/shut-in fields). There is no fiscal limit on the amount of royalty reduction under 38.05.180(j)(1)(A) which would require the Governor's signature on the preliminary and final findings.

Amendment #2) Page 4, Lines 18-20:
(B) keep the data [except for the data] disclosed under (10) of this subsection [to a committee of the legislature or] to the Legislative Budget and Audit Committee, confidential under AS 38.05.035(a)(9) upon the request of the lessee or lessees making application for the royalty increase or decrease or other royalty adjustment.

Page 5, Lines 21-32 and Page 6 Lines 1-15 also Page 6, lines 31-32 and Page 7:
Remove reference to legislative approval. Revert to language similar to CS HB 207(FIN) am where the commissioner offers to appear before the L.B.&A committee with the preliminary findings and determination. Please be sure to retain requirement that confidential information be submitted to L.B.&A. (See Section 8 of CS HB 207(FIN)).

Amendment #3) Clean up amendment

Page 2, Line 19:
DELETE (increase.)

Page 3, Line 5:
After including INSERT: price.

Page 3, Line 6:
After development (and) operating and transportation costs.

Page 3, Line 9:
After royalty, DELETE (a share of net profits.)

Amendment #4) Page 5, Lines 13-15:

(C) the projected [social] effects of the proposed royalty increase, decrease, or other adjustment[,including its effects] on the employment of Alaskans and the use of in-state contractors and suppliers; and

4/29 B Version

Senate CS for CSHB207-Adjustments to Oil and Gas Royalties

Sec. 1 technical ✓

Sec. 2
p 2 Line 10 pool, or portion of field or pool
p 2 Line 11 pool, or portion of field or pool
p 2 Line 14 pool, or portion of field or pool
p 2 Line 16 pool, or portion of field or pool
p 2 Line 18 pool, or portion of field or pool

p 2 Line 9-10 sunset 5 year minimum 6/1/2000

p 2 (B) H language
pool, or portion of field or pool

p3 Line 4-15 (B) delete "price"
(C) shall address price change and other relevant factors
(D) delete 11-15

p3 Line 17 pool, or portion of field or pool

p 3 4 (A) (ii) LB&A only may review if not done in 40 days. May do advisory decision.
Time frame - 40 days from public notice
confidential info only to professional staff

p 4 Line 5 delete from ; through Line 8

p 4 Line 14 delete "transportation and marketing of oil and gas"

p 4 Line 15 delete "necessary"
insert "reasonably available to applicant"

p 4 (5) (B) insert confidentiality language
use House language on AS 38.05.035(a) (9)

p 5 (9) findings (A), (B), and (D) OK as written
(C) delete (C) through adjustment

combine B & C-delete social effect

p 5 (10) delete totally
insert new language (LGA)

p 6-7 (12) no appealability
A (ii)

p 7 Line 9-10 delte "as to - other adjustment"

p 7 (B) delete (oversight)

Sec. 3, 4 & 5 delete "increase, or otherwise adjust"



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: Jack Chenoweth, Attorney
Legal Services

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: April 29, 1995

RE: CS HB 207, Adjustments for Oil and Gas Royalties

Great catch (see previous memo).

- 1) Change the public comment period in subsection (8) to 30 days.
- 2) Put parallel language in (10)(A) that deals with the commissioner appearing before legislative committees no earlier than 10 and no later than 20 days after giving public notice as provided under (8) of this subsection.
- 3) Page 7, (B)(ii) line 20 and line 27: Change legislative and LB&A committee review to 50 days (from 45). The clock for legislative review and LB&A review will run concurrently with the commissioner's preparation of final determinations/findings. So, we need to change line 20: act within 50 days of the end of the public comment period under subsection (8) [of submission of the proposed final findings and determination] same on line 27: act within [45] 50 days of the end of the public comment period under subsection (8) [of submission of the proposed final findings and determination].
- 4) Regarding page 4, paragraph 5: the assignee has to meet the criteria under (j)(2) on page 2 lines 23-27.

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(907) 465-3867 or 465-2450
FAX (907) 465-2029
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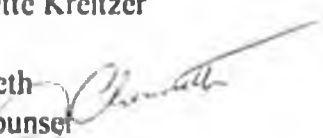
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 29, 1995

SUBJECT: Draft SCS CSHB 207(RES), authorizing the commissioner of natural resources to make adjustments of royalties payable by state lessees on oil and gas production (Work Order No. 9GH-0039\V)

TO: Senator Loren Leman, Chair
Senate Resources Committee
ATTN: Annette Kreitzer

FROM: Jack Chenoweth
Legislative Counsel 

And yet another draft . . . And yet another memo

Look at your last transmittal. On page 1, where you ask that the date be changed to March 15, 1999, you go on to say "for all requests for royalty modification." Do you mean all? If so, this draft doesn't do that. This draft retains the distinction between "new" production under subparagraph (A) and existing and reestablished production under subparagraphs (B) and (C)

In paragraph (5), does anyone know what is being talked about when, with reference to an assignment, there is imposed the requirement that "the assignment meets the requirements of this subsection." There are no requirements that are explicitly specific to assignments, so I think this requirement could prove to be a bone of contention unless something more specific is substituted.

JBC:gc
95-316.glc

Enclosure

9-GH0039V ✓
Chenoweth
4/29/95

DRAFT

SENATE CS FOR CS FOR HOUSE BILL NO. 207(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR
A BILL

FOR AN ACT ENTITLED

1 "An Act relating to adjustments to royalty reserved to the state to encourage
2 otherwise uneconomic production of oil and gas; and providing for an effective
3 date."

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

5 • Section 1. AS 36.30.850(b) is amended by adding a new paragraph to read:

6 (33) contracts between the Department of Natural Resources and
7 contractors qualified to evaluate hydrocarbon development, production, transportation,
8 and marketing economics, to assist the commissioner of natural resources in evaluating
9 applications for oil and gas royalty increases or decreases or other oil and gas royalty
10 adjustments, and evaluating the related financial and technical data, entered into under
11 AS 38.05.180(j).

12 • Sec. 2. AS 38.05.180(j) is amended to read:

13 (j) The [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS
14 FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR

1 GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE]
2 commissioner

3 (1) may provide for an increase or decrease or otherwise adjust
4 [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION OF] royalty on
5 individual leases, leases unitized as described in (p) of this section, leases subject to
6 an agreement described in (s) or (t) of this section, or interests unitized under
7 AS 31.05; the commissioner may act under this subsection to increase, decrease, or
8 otherwise adjust the royalty

9 (A) after the effective date of this Act and not later than
10 March 15, 1999, to allow for production from an oil or gas field if

11 (i) the oil or gas field has been delineated sufficiently
12 to allow the commissioner to conduct the analyses and make the
13 findings required by this subsection;

14 (ii) the field has not previously produced oil or gas for
15 sale; and

16 (iii) oil or gas production from the field would not
17 otherwise be economically feasible;

18 (B) to prolong the economic life of an oil or gas field when the
19 field's operating costs exceed its revenue and, without a royalty increase,
20 decrease, or other adjustment, are likely to continue to do so; or

21 (C) to reestablish production of shut-in oil or gas that would
22 not otherwise be economically feasible;

23 (2) [. THE COMMISSIONER] may not grant a [REDUCTION OF]
24 royalty increase, decrease, or other adjustment unless the lessee or lessees requesting
25 the increase, decrease, or other adjustment [REDUCTION] makes a clear and
26 convincing showing that an increase, decrease, or other adjustment of royalty meets
27 the requirements of this subsection and is in the best interests of the state;

28 (3) shall

29 (A) [THE REVENUE FROM THE LESSEE'S SHARE OF ALL
30 HYDROCARBONS PRODUCED FROM THE FIELD IS AND IS LIKELY TO
31 CONTINUE TO BE INSUFFICIENT TO PRODUCE A REASONABLE RATE
32 OF RETURN WITH RESPECT TO THE LESSEE'S TOTAL INVESTMENT IN

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THE FIELD. THE COMMISSIONER MAY] condition any [A] royalty increase, decrease, or other adjustment [REDUCTION] granted under this subsection in any way necessary to protect the state's best interests;

(B) describe, in the findings and determinations required by this subsection, the assumptions, including projected production rate or volume, predicted ultimate recovery, or development and operating costs, upon which the increase, decrease, or other adjustment is based; and

(C) set out the terms and conditions, which may include substitution of a sliding scale royalty, a share of net profits, or other mechanisms, that will govern subsequent increases, decreases, or other adjustments to restore, increase, or decrease the state's royalty share if the assumptions upon which the commissioner relied are subsequently determined to have underestimated or overestimated the economic feasibility of the field's development without a royalty increase, decrease, or other adjustment;

(4) may not grant a royalty increase, decrease, or other adjustment for a field

(A) under (1)(A) of this subsection if the

(i) royalty increase, decrease, or adjustment for the field would establish a royalty rate of less than five percent in amount or value of the production removed or sold from a lease or leases covering the field; or

(ii) anticipated aggregate value of the proposed royalty decrease or other adjustment is a reduction that would exceed \$10,000,000 unless the commissioner and the lessee or lessees applying for the royalty decrease or other adjustment agree that the decrease or other adjustment may take effect only if not disapproved under (12)(B)(ii) of this subsection and the commissioner first submits the decrease or other adjustment under that provision;

(B) under (1)(B) or (1)(C) of this subsection if the royalty decrease or other adjustment for the field would establish a royalty rate of less than three percent in amount or value of the production removed or

DRAFT

1 sold from a lease or leases covering the field;

2 (5) may not grant a royalty increase, decrease, or other adjustment
3 under this subsection without including an explicit condition that the royalty
4 increase, decrease, or other adjustment is not assignable without the prior written
5 approval of the commissioner; the commissioner's approval of an assignment must
6 be based on a clear and convincing showing by the assignor that the assignment
7 meets the requirements of this subsection and is in the best interests of the state;

8 (6) shall require the lessee or lessees to submit, with the application
9 for the royalty increase, decrease, or other adjustment, financial and technical data
10 that demonstrate that the requirements of this subsection are met; the commissioner
11 shall

12 (A) require disclosure of the financial and technical data
13 relating to development, production, transportation, and marketing of oil
14 and gas from the field that are necessary to make a determination as to
15 whether or not to grant the request for royalty increase, decrease, or other
16 adjustment; and

17 (B) keep the data, except for the data disclosed under (10) of
18 this subsection to a committee of the legislature or to the Legislative Budget
19 and Audit Committee, confidential under AS 38.05.035(a)(9) upon the
20 request of the lessee or lessees making application for the royalty increase
21 or decrease or other royalty adjustment;

22 (7) may require the lessee or lessees making application for the
23 royalty increase, decrease, or other adjustment to pay for the services of an
24 independent contractor, qualified to evaluate hydrocarbon development, production,
25 transportation, and marketing economics, who is selected by the commissioner to
26 assist the commissioner in evaluating the application and financial and technical
27 data; selection of an independent contractor under this paragraph is not subject to
28 AS 36.30;

29 (8) shall make and publish a preliminary findings and determination
30 on the royalty increase, decrease, or other adjustment application, give reasonable
31 public notice of the preliminary findings and determination, and invite public
32 comment on the preliminary findings and determination during a 60-day period for

1 is not in session, or as to a royalty increase, decrease, or adjustment other
 2 than one described in (4)(A)(ii) of this subsection, shall offer to appear
 3 before the Legislative Budget and Audit Committee on a day that is not
 4 earlier than 10 days and not later than 20 days after giving public notice
 5 under (8) of this subsection, to provide the committee a review of the
 6 commissioner's preliminary findings and determination on the royalty
 7 increase, decrease, or other adjustment application and the supporting
 8 financial and technical data; if the Legislative Budget and Audit Committee
 9 accepts the commissioner's offer, the committee shall give notice of the
 10 committee meeting to all members of the legislature; if, under (6)(B) of this
 11 subsection, the financial and technical data must be kept confidential at the
 12 request of a lessee or lessees making application for the royalty increase or
 13 decrease or other royalty adjustment, the commissioner may appear before
 14 the committee in executive session;

15 (11) shall make copies of the preliminary findings and determination
 16 available to

17 (A) the presiding officer of each house [INTEREST,
 18 INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE
 19 EVENT OF AN INCREASE IN THE PRICE OF OIL OR GAS. BEFORE
 20 APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL
 21 MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE
 22 MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE
 23 WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR
 24 THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS]
 25 of the legislature;

26 (B) the chairs of the legislature's standing committees on
 27 resources; and

28 (C) the chairs of the legislature's special committees on oil
 29 and gas, if any;

30 (12) shall,

31 (A) for a royalty increase, decrease, or other adjustment that
 32 does not, under (4)(A)(ii) of this subsection, require legislative approval,

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within 30 days after the close of the public comment period under (8) of this subsection.

(i) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(ii) make a final findings and determination; the commissioner's final findings and determination prepared under this subparagraph regarding a royalty increase, decrease, or other adjustment is, as to the lessee or lessees applying for the royalty increase, decrease, or other adjustment, final and not appealable to the court;

(B) for a royalty increase, decrease, or other adjustment that, under (4)(A)(ii) of this subsection, requires legislative approval, within 30 days after the close of the public comment period under (8) of this subsection,

(i) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(ii) make a proposed final findings and determination and submit it to the presiding officer of each house of the legislature; if the legislature is in session at the time of submission and does not act within 45 days of submission of the proposed final findings and determination to the presiding officers to disapprove the commissioner's proposed final findings and determination by enacting legislation, the commissioner shall issue a final findings and determination; if the legislature is not in session, the Legislative Budget and Audit Committee shall review and approve or disapprove proposed final findings and determinations; if the Legislative Budget and Audit Committee does not act within 45 days of submission of the proposed final findings and determination to disapprove, by majority vote of the committee's full membership, the commissioner's proposed final findings and determinations, the commissioner shall issue a final findings and determination; the commissioner's final findings and determination prepared under this subparagraph

DRAFT

copy of the minutes 1/10/04

1 regarding the royalty increase, decrease, or other adjustment is, as
 2 to the lessee or lessees applying for the royalty increase, decrease, or
 3 other adjustment, final and not appealable to the court;

4 (C) transmit a copy of the final findings and determination
 5 prepared under (A) or (B) of this paragraph to the lessee or lessees making
 6 application for the royalty increase, decrease, or other adjustment;

7 (D) with the consent of the lessee or lessees applying for the
 8 royalty increase, decrease, or other adjustment, amend the lease or
 9 unitization agreement of the lessee or lessees applying for the royalty
 10 increase, decrease, or other adjustment consistent with the commissioner's
 11 final findings and determination; and

12 (E) make copies of the final findings and determination
 13 available to each person who submitted comment under (8) of this subsection
 14 and who has filed a request for the copies;

15 (13) is not limited by the provisions of AS 38.05.134(3) or (D) of this
 16 section in the commissioner's determination under this subsection.

17 • Sec. 3. AS 38.05.180(p) is amended to read:

18 (p) To conserve the natural resources of all or a part of an oil or gas pool, field,
 19 or like area, the lessees and their representatives may unite with each other, or jointly
 20 or separately with others, in collectively adopting or operating under a cooperative or a
 21 unit plan of development or operation of the pool, field, or like area, or a part of it, when
 22 determined and certified by the commissioner to be necessary or advisable in the public
 23 interest. The commissioner may, with the consent of the holders of leases involved,
 24 establish, change, or revoke drilling, producing, and royalty requirements of the leases
 25 and adopt regulations with reference to the leases, with like consent on the part of the
 26 lessees, in connection with the institution and operation of a cooperative or unit plan as
 27 the commissioner determines necessary or proper to secure the proper protection of the
 28 public interest. The commissioner may not increase or decrease or otherwise adjust
 29 royalty on leases in connection with a cooperative or unit plan except as provided
 30 in (1) of this section. The commissioner may require oil and gas leases issued under this
 31 section to contain a provision requiring the lessee to operate under a reasonable
 32 cooperative or unit plan, and may prescribe a plan under which the lessee must operate.

1 The plan must adequately protect all parties in interest, including the state.

2 • Sec. 4. AS 38.05.180(s) is amended to read:

3 (s) When separate tracts cannot be individually developed and operated in
4 conformity with an established well-spacing or development program, a lease, or a
5 portion of a lease, may be pooled with other land, whether or not owned by the state,
6 under a communication or drilling agreement providing for an apportionment of
7 production or royalties among the separate tracts of land comprising the drilling or
8 spacing unit when determined by the commissioner to be in the public interest.
9 Operations or production under the agreement are considered as operations or production
10 as to each lease committed to the agreement. The commissioner may not increase or
11 decrease or otherwise adjust royalty on leases in connection with a communication
12 or drilling agreement except as provided in (i) of this section.

13 • Sec. 5. AS 38.05.180(i) is amended to read:

14 (i) The commissioner may prescribe conditions and approve, on conditions,
15 drilling, or development contracts made by one or more lessees of oil or gas leases, with
16 one or more persons, when, in the discretion of the commissioner, the conservation of
17 natural resources or the public convenience or necessity requires it or the interests of the
18 state are best served. All leases operated under approved drilling or development
19 contracts and interests under them, are excepted in determining holding or control under
20 AS 38.05.140. The commissioner may not increase or decrease or otherwise adjust
21 royalty on a lease or leases that are subject to a drilling or development contract
22 except as provided in (j) of this section.

23 • Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

DRAFT



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: Jack Chenoweth, Attorney
Legal Services
via fax: 2029 2 pages please confirm to 14907

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: April 28, 1995

RE: CS for HB 207, Adjustments for Oil and Gas

There are a couple of changes that affect the whole bill. Throughout the bill replace the phrase "royalty adjustment" with either "increase, decrease or otherwise adjust" or "increase, decrease or adjustment" where appropriate.

Rework legislative approval of these increases, decreases or adjustments as follows: If the legislature fails to act on a royalty increase, decrease or other adjustment within 45 days of the commissioner presenting a proposal in writing to the Senate President and the Speaker of the House, the royalty increase, decrease or other modification is automatically approved. The legislature may delegate the responsibility for approving a royalty increase, decrease or other adjustment to the Legislative Budget and Audit Committee when the Legislature is not in session. If the LB&A Committee fails to act on a royalty increase, decrease or other adjustment within 45 days of the commissioner presenting a proposal in writing to the members of the LB&A committee, the royalty increase, decrease or other adjustment is automatically approved.

- 1) Page 1, NO CHANGES
- 2) Page 2, Change date for expiration of authority to grant adjustment to royalties to March 15, 1999, for all requests for royalty modification.
- 3) Page 2, Lines 27-32:

Delete all text, and insert:

(B) describe in the findings and determination required under this subsection the assumptions, including price, projected production rate or volume, projected ultimate recovery, or development and operating costs, upon which the increase, decrease or other adjustment is based; and

(C) set forth the terms and conditions, which may include the submission of a sliding scale royalty, a share of net profits or other mechanisms which will govern subsequent increases, decreases or adjustments to royalty, increase or decrease the state's royalty share if the assumptions upon which the commissioner relied are subsequently determined either to have underestimated or overestimated the economic feasibility of the field's development without a royalty adjustment.

- 4) Page 3, after line 2: Insert new (i) make the former (i) into (ii)
if the royalty adjustment for the field would establish a royalty rate of less than five percent in amount or value of the production removed or sold from a lease or leases covering the field:
- 5) Page 3, Line 4: Delete [\$\$] and insert \$10 million; Delete [if the royalty adjustment is a reduction that exceeds 50 percent of the royalty originally specified in a lease entered into under the provisions of (f) of this section or AS 38.05.134,]
- 6) Page 3, Lines 12-17: Delete sunset provision.
- 7) Page 3, line 23:
After the word assignable, insert: without the prior written approval of the commissioner, which approval shall be based upon a clear and convincing showing that the assignment meets the requirements of this subsection and is in the best interests of the state.
- 8) Page 3, Line 29: This paragraph requires disclosure of information and there is concern that it's not adequately stated that the information being disclosed is being disclosed to the Commissioner, the legislature or to the L&A committee. Clarify this. Also, Delete [in the Commissioner's sole discretion,]
- 9) Page 4, Lines 1-2: Delete [and its staff or agents].
- 10) Page 4, Lines 4-8: Allow the procedure of the Commissioner's selection of an independent contractor to be waived from state procurement code.
- 11) Page 4, Lines 16-17: DELETE
- 12) Page 4, Line 19: DELETE.
- 13) Page 4, Lines 28-30: DELETE ALL MATERIAL, and insert:
(E) the projected effects of the proposed royalty increase, decrease or adjustment upon existing and potential new oil and gas exploration and development, competition, and patterns of investments related to those activities.
- 14) Page 4, Lines 31-32: DELETE
- 15) Page 5, Line 4: Delete [20] and insert 10, delete [40] and insert 20
- 16) Page 5, Lines 3-4:
Delete [in executive session or otherwise as determined by the committee to be appropriate]
- 17) Page 5, Lines 5-6: Delete [and its staff and agents]

Annette - I think the write

MEMO

TO: Jack Chenoweth, Attorney
Legal Services
FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee
DATE: April 28, 1995
RE: CS for HB 107, Adjustments for Oil and Gas

Where is the provision that
reduction under (j)(1)(A) cannot
be less than 5%? I am confused
or didn't Loven want to remove.
Also, depending upon your recollection,
we may need to revise page 3, line
4 - ?

- 1) Page 1, NO CHANGES
- 2) Page 2, Change date for expiration of authority to grant adjustment to royalties to March 15, 1999, for all requests for royalty modification.
- 3) Page 2, Lines 27-32:

Delete all text, and insert:

(B) describe in the findings and determination required under this subsection the assumptions, including price, projected production rate or volume, predicted ultimate recovery, or development and operating costs, upon which the increase, decrease or other adjustment is based; and

(C) set forth the terms and conditions, which may include the substitution of a sliding scale royalty, a share of net profits or other mechanisms which will govern subsequent increases, decreases or adjustments to restore or increase the state's royalty share if the assumptions upon which the commissioner relied are subsequently determined to have underestimated the economic feasibility of the field's development without a royalty adjustment.

- 4) Page 3, Line 4: Delete \$5 million and insert \$10 million
→ what about page 3, lines 7-9? let's discuss.
- 5) Page 3, Lines 12-17: Delete sunset provision, and insert:

6) Page 3, line 23
After the word assignable, insert: without the prior written approval of the commissioner, which approval shall be based upon a clear and convincing showing that the assignment meets the requirements of this subsection and is in the best interests of the state.

- 7) Page 3, Line 29: Delete (in the Commissioner's sole discretion).
- 8) Page 4, Lines 1-2: Delete (and its staff or agents).

(iii) if the royalty adjustment for the field would establish a royalty rate of less than five percent in amount or value of the production removed or sold from a lease or leases covering the field.

9) Page 4, Lines 4-8: Allow the procedure of the Commissioner's selection of an independent contractor to be waived from state procurement code.

10) Page 4, Lines 16-17: DELETE

11) Page 4, Line 19: DELETE. Do you need to specify re-letting (B)(C) to be (A)(B) & (C)?

12) Page 4, Lines 28-30: DELETE ALL MATERIAL, and insert:
(D) (E) the projected effects of the proposed royalty increase, decrease or adjustment upon existing and potential new oil and gas exploration and development, competition, and patterns of investments related to those activities;

13) Page 4, Lines 31-32: DELETE

14) Page 5, Line 4: Delete [20] and insert 10; delete [40] and insert 20

15) Page 5, Lines 3-4:
Delete [in executive session or otherwise as determined by the committee to be appropriate]

16) Page 5, Lines 5-6: Delete [and its staff and agents]

17) There should be a provision in subsection (10) (Page 5) for what happens if the Legislative Budget and Audit Committee doesn't approve

18) OTHER NOTES: Page 3, subsection 6(A)

a) Throughout the bill replace the phrase "royalty adjustment" with "increase, decrease or otherwise adjust".

b) ~~Page 3(A)~~: Does this mean anyone gets the information or disclosure or does the info go to DNR or the Legislature? It should clarify that disclosure is limited to DNR & Legislature.

c) Rework legislative oversight with the following: a proposal
2 If legislature fails to act on a royalty increase, decrease or other modification within 30 days of the Commissioner presenting it in writing to the Senate President and the Speaker of the House, the royalty increase, decrease or other modification is automatically approved. adjustment

adjustment The legislature may delegate the responsibility for approving a royalty increase, decrease or other modification to the Legislative Budget and Audit Committee when the Legislature is not in session. If the LB&A committee fails to act on a royalty increase, decrease or other modification within 30 days of the Commissioner presenting it in writing to the members of the LB&A Committee, the royalty increase, decrease or other modification is automatically approved.
(KEEP the threshold language of \$10 million; and contract provision language on Page 3, lines 7-11.)

New language for amendments to Senate CS for CS for House Bill No. 207 (RES)

April 28, 1995

Page 2, lines 27-32

Delete all text, and insert

(B) describe in the findings and determination required under this subsection the assumptions, including price, projected production rate or volume, predicted ultimate recovery, or development and operating costs, upon which the increase, decrease or other adjustment is based;

(C) set forth the terms and conditions, which may include the substitution of a sliding scale royalty, a share of net profits or other mechanisms which will govern subsequent increases, decreases or adjustments to restore or increase the state's royalty share if the assumptions upon which the commissioner relied are subsequently determined to have underestimated the economic feasibility of the field's development without a royalty adjustment;

Page 3, line 23

After the word assignable, insert: without the prior written approval of the commissioner, which approval shall be based upon a clear and convincing showing that the assignment meets the requirements of this subsection and is in the best interests of the state;

Page 4, lines 28-30

Redraft as follows:

(D) [E] the projected effects of the proposed royalty increase, decrease or adjustment upon existing and potential new oil and gas exploration and development [commercial enterprise], competition, and patterns of investments related to those activities [within the state];

*Sliding scale
deal & deferral*

9-GH0039\B ✓
Chenoweth
4/29/95

SENATE CS FOR CS FOR HOUSE BILL NO. 207(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsors: HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to adjustments to royalty reserved to the state to encourage
2 otherwise uneconomic production of oil and gas; and providing for an effective
3 date."

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

5 * Section 1. AS 36.30.850(b) is amended by adding a new paragraph to read:
6 (33) contracts between the Department of Natural Resources and
7 contractors qualified to evaluate hydrocarbon development, production, transportation,
8 and marketing economics, to assist the commissioner of natural resources in evaluating
9 applications for oil and gas royalty increases or decreases or other oil and gas royalty
10 adjustments, and evaluating the related financial and technical data, entered into under
11 AS 38.05.180(j).

12 * Sec. 2. AS 38.05.180(j) is amended to read.
13 (j) ~~The~~ [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS
14 FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR

1 GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE]
2 commissioner

3 (1) may provide for an increase or decrease or otherwise adjust
4 [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION OF] royalty on
5 individual leases, leases unitized as described in (p) of this section, leases subject to
6 an agreement described in (s) or (t) of this section, or interests unitized under
7 AS 31.05; the commissioner may act under this subsection to increase, decrease, or
8 otherwise adjust the royalty

9 (A) after the effective date of this Act and not later than
10 March 15, 1999, to allow for production from an oil or gas field if

11 (i) the oil or gas field has been delineated sufficiently
12 to allow the commissioner to conduct the analyses and make the
13 findings required by this subsection;

14 (ii) the field has not previously produced oil or gas for
15 sale; and

16 (iii) oil or gas production from the field would not
17 otherwise be economically feasible;

18 (B) to prolong the economic life of an oil or gas field when the
19 field's operating costs exceed its revenue and, without a royalty increase,
20 decrease, or other adjustment, are likely to continue to do so; or

21 (C) to reestablish production of shut-in oil or gas that would
22 not otherwise be economically feasible;

23 (2) [THE COMMISSIONER] may not grant a [REDUCTION OF]
24 royalty increase, decrease, or other adjustment unless the lessee or lessees requesting
25 the increase, decrease, or other adjustment [REDUCTION] makes a clear and
26 convincing showing that an increase, decrease, or other adjustment of royalty meets
27 the requirements of this subsection and is in the best interests of the state;

28 (3) shall

29 (A) [THE REVENUE FROM THE LESSEE'S SHARE OF ALL
30 HYDROCARBONS PRODUCED FROM THE FIELD IS AND IS LIKELY TO
31 CONTINUE TO BE INSUFFICIENT TO PRODUCE A REASONABLE RATE
32 OF RETURN WITH RESPECT TO THE LESSEE'S TOTAL INVESTMENT IN

1 THE FIELD. THE COMMISSIONER MAY] condition any [A] royalty
2 increase, decrease, or other adjustment [REDUCTION] granted under this
3 subsection in any way necessary to protect the state's best interests;

4 (B) describe, in the findings and determinations required by
5 this subsection, the assumptions, including ^{price} projected production rate or
6 volume, predicted ultimate recovery, or development and operating costs,
7 upon which the increase, decrease, or other adjustment is based; and

8 (C) set out the terms and conditions, which may include
9 substitution of a sliding scale royalty, a share of net profits, or other
10 mechanisms, that will govern subsequent increases, decreases, or other
11 adjustments to restore, increase, or decrease the state's royalty share if the
12 assumptions upon which the commissioner relied are subsequently
13 determined to have underestimated or overestimated the economic feasibility
14 of the field's development without a royalty increase, decrease, or other
15 adjustment;

16 (4) may not grant a royalty increase, decrease, or other adjustment
17 for a field

18 (A) under (1)(A) of this subsection if the

19 (i) royalty increase, decrease, or adjustment for the
20 field would establish a royalty rate of less than five percent in
21 amount or value of the production removed or sold from a lease or
22 leases covering the field; or

23 (ii) anticipated aggregate value of the proposed royalty
24 decrease or other adjustment is a reduction that would exceed
25 \$10,000,000 unless the commissioner and the lessee or lessees
26 applying for the royalty decrease or other adjustment agree that the
27 decrease or other adjustment may take effect only if not disapproved
28 under (12)(B)(ii) of this subsection and the commissioner first submits
29 the decrease or other adjustment under that provision;

30 (B) under (1)(B) or (1)(C) of this subsection if the royalty
31 decrease or other adjustment for the field would establish a royalty rate of
32 less than three percent in amount or value of the production removed or

1 sold from a lease or leases covering the field;

2 (5) may not grant a royalty increase, decrease, or other adjustment
3 under this subsection without including an explicit condition that the royalty
4 increase, decrease, or other adjustment is not assignable without the prior written
5 approval of the commissioner; the commissioner's approval of an assignment must
6 be based on a clear and convincing showing by the assignor that the assignment
7 meets the requirements of (1) of this subsection and is in the best interests of the
8 state;

9 (6) shall require the lessee or lessees to submit, with the application
10 for the royalty increase, decrease, or other adjustment, financial and technical data
11 that demonstrate that the requirements of this subsection are met; the commissioner
12 shall

13 (A) require disclosure of the financial and technical data
14 related to development, production, transportation, and marketing of oil and
15 gas from the field that are necessary to make a determination as to whether
16 or not to grant the request for royalty increase, decrease, or other
17 adjustment; and

18 (B) keep the data, except for the data disclosed under (10) of
19 this subsection to a committee of the legislature or to the Legislative Budget
20 and Audit Committee, confidential under AS 38.05.035(a)(9) upon the
21 request of the lessee or lessees making application for the royalty increase
22 or decrease or other royalty adjustment;

23 (7) may require the lessee or lessees making application for the
24 royalty increase, decrease, or other adjustment to pay for the services of an
25 independent contractor, qualified to evaluate hydrocarbon development, production,
26 transportation, and marketing economics, who is selected by the commissioner to
27 assist the commissioner in evaluating the application and financial and technical
28 data; selection of an independent contractor under this paragraph is not subject to
29 AS 36.30;

30 (8) shall make and publish a preliminary findings and determination
31 on the royalty increase, decrease, or other adjustment application, give reasonable
32 public notice of the preliminary findings and determination, and invite public

1 comment on the preliminary findings and determination during a 30-day period for
2 receipt of public comment;

3 (9) shall address in any findings and determinations required under
4 this subsection

5 (A) the projected effects of the proposed royalty increase,
6 decrease, or other adjustment;

7 (B) the likelihood that the proposed royalty increase, decrease,
8 or other adjustment will result in incremental capital investment or other
9 beneficial spending within the state, and the steps taken by the commissioner
10 in conditioning the royalty increase, decrease, or other adjustment to assure
11 that anticipated investments or other beneficial spending within the state
12 occur;

13 (C) the projected social effects of the proposed royalty
14 increase, decrease, or other adjustment, including its effects on the
15 employment of Alaskans and the use of in-state contractors and suppliers;
16 and

17 (D) the projected effects of the proposed royalty increase,
18 decrease, or adjustment upon existing and potential new oil and gas
19 exploration and development, and upon competition and patterns of
20 investments related to oil and gas exploration and development;

21 (10) as to

22 (A) a royalty decrease or other royalty adjustment that, under
23 (4)(A)(ii) of this subsection, requires legislative approval and the legislature
24 is in session, may appear before one or more standing or special committees
25 of each house of the legislature to provide the committee a review of the
26 commissioner's preliminary findings and determination on the royalty
27 increase, decrease, or other adjustment application and the supporting
28 financial and technical data; if, under (6)(B) of this subsection, the financial
29 and technical data must be kept confidential at the request of a lessee or
30 lessees making application for the royalty decrease or other adjustment, the
31 commissioner may appear before a committee in executive session; and

32 (B) a royalty decrease or other adjustment that, under

1 (4)(A)(ii) of this subsection, requires legislative approval and the legislature
2 is not in session, or as to a royalty increase, decrease, or adjustment other
3 than one described in (4)(A)(ii) of this subsection, shall offer to appear
4 before the Legislative Budget and Audit Committee on a day that is not
5 earlier than 10 days and not later than 20 days after giving public notice
6 under (8) of this subsection, to provide the committee a review of the
7 commissioner's preliminary findings and determination on the royalty
8 increase, decrease, or other adjustment application and the supporting
9 financial and technical data; if the Legislative Budget and Audit Committee
10 accepts the commissioner's offer, the committee shall give notice of the
11 committee's meeting to all members of the legislature; if, under (6)(B) of this
12 subsection, the financial and technical data must be kept confidential at the
13 request of a lessee or lessees making application for the royalty increase or
14 decrease or other royalty adjustment, the commissioner may appear before
15 the committee in executive session;

16 (11) shall make copies of the preliminary findings and determination
17 available to

18 (A) the presiding officer of each house [INTEREST,
19 INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE
20 EVENT OF AN INCREASE IN THE PRICE OF OIL OR GAS. BEFORE
21 APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL
22 MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE
23 MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE
24 WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR
25 THE LESSEE. AND SEND COPIES OF THE FINDING TO ALL MEMBERS]
26 of the legislature;

27 (B) the chairs of the legislature's standing committees on
28 resources; and

29 (C) the chairs of the legislature's special committees on oil
30 and gas, if any;

31 (12) shall,

32 (A) for a royalty increase, decrease, or other adjustment that

1 does not, under (4)(A)(ii) of this subsection, require legislative approval,
2 within 30 days after the close of the public comment period under (8) of this
3 subsection,

4 (i) prepare a summary of the public response to the
5 commissioner's preliminary findings and determination;

6 (ii) make a final findings and determination; the
7 commissioner's final findings and determination prepared under this
8 subparagraph regarding a royalty increase, decrease, or other
9 adjustment is, as to the lessee or lessees applying for the royalty
10 increase, decrease, or other adjustment, final and not appealable to
11 the court;

12 (B) for a royalty increase, decrease, or other adjustment that,
13 under (4)(A)(ii) of this subsection, requires legislative approval, within 30
14 days after the close of the public comment period under (8) of this
15 subsection,

16 (i) prepare a summary of the public response to the
17 commissioner's preliminary findings and determination;

18 (ii) make a proposed final findings and determination
19 and submit it to the presiding officer of each house of the legislature;
20 if the legislature is in session at the time of submission and does not
21 act within 50 days after the close of the public comment period under
22 (8) of this subsection to disapprove the commissioner's proposed final
23 findings and determination by enacting legislation, the commissioner
24 shall issue a final findings and determination; if the legislature is not
25 in session, the Legislative Budget and Audit Committee shall review
26 and approve or disapprove proposed final findings and
27 determinations; if the Legislative Budget and Audit Committee does
28 not act within 50 days after the close of the public comment period
29 under (8) of this subsection to disapprove, by majority vote of the
30 committee's full membership, the commissioner's proposed final
31 findings and determinations, the commissioner shall issue a final
32 findings and determination; the commissioner's final findings and

1 determination prepared under this subparagraph regarding the
2 royalty increase, decrease, or other adjustment is, as to the lessee or
3 lessees applying for the royalty increase, decrease, or other
4 adjustment, final and not appealable to the court;

5 (C) transmit a copy of the final findings and determination
6 prepared under (A) or (B) of this paragraph to the lessee or lessees making
7 application for the royalty increase, decrease, or other adjustment;

8 (D) with the consent of the lessee or lessees applying for the
9 royalty increase, decrease, or other adjustment, amend the lease or
10 unitization agreement of the lessee or lessees applying for the royalty
11 increase, decrease, or other adjustment consistent with the commissioner's
12 final findings and determination; and

13 (E) make copies of the final findings and determination
14 available to each person who submitted comment under (8) of this subsection
15 and who has filed a request for the copies;

16 (13) is not limited by the provisions of AS 38.05.134(3) or (f) of this
17 section in the commissioner's determination under this subsection.

18 • Sec. 3. AS 38.05.180(p) is amended to read:

19 (p) To conserve the natural resources of all or a part of an oil or gas pool, field,
20 or like area, the lessees and their representatives may unite with each other, or jointly
21 or separately with others, in collectively adopting or operating under a cooperative or a
22 unit plan of development or operation of the pool, field, or like area, or a part of it, when
23 determined and certified by the commissioner to be necessary or advisable in the public
24 interest. The commissioner may, with the consent of the holders of leases involved,
25 establish, change, or revoke drilling, producing, and royalty requirements of the leases
26 and adopt regulations with reference to the leases, with like consent on the part of the
27 lessees, in connection with the institution and operation of a cooperative or unit plan as
28 the commissioner determines necessary or proper to secure the proper protection of the
29 public interest. The commissioner may not increase or decrease or otherwise adjust
30 royalty on leases in connection with a cooperative or unit plan except as provided
31 in (j) of this section. The commissioner may require oil and gas leases issued under this
32 section to contain a provision requiring the lessee to operate under a reasonable

1 cooperative or unit plan, and may prescribe a plan under which the lessee must operate.

2 The plan must adequately protect all parties in interest, including the state.

3 • Sec. 4. AS 38.05.180(s) is amended to read:

4 (s) When separate tracts cannot be individually developed and operated in
5 conformity with an established well-spacing or development program, a lease, or a
6 portion of a lease, may be pooled with other land, whether or not owned by the state,
7 under a communication or drilling agreement providing for an apportionment of
8 production or royalties among the separate tracts of land comprising the drilling or
9 spacing unit when determined by the commissioner to be in the public interest.
10 Operations or production under the agreement are considered as operations or production
11 as to each lease committed to the agreement. The commissioner may not increase or
12 decrease or otherwise adjust royalty on leases in connection with a communication
13 or drilling agreement except as provided in (i) of this section.

14 • Sec. 5. AS 38.05.180(t) is amended to read:

15 (t) The commissioner may prescribe conditions and approve, on conditions,
16 drilling, or development contracts made by one or more lessees of oil or gas leases, with
17 one or more persons, when, in the discretion of the commissioner, the conservation of
18 natural resources or the public convenience or necessity requires it or the interests of the
19 state are best served. All leases operated under approved drilling or development
20 contracts and interests under them, are excepted in determining holding or control under
21 AS 38.05.140. The commissioner may not increase or decrease or otherwise adjust
22 royalty on a lease or leases that are subject to a drilling or development contract
23 except as provided in (i) of this section.

24 • Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

SECTIONAL ANALYSIS
OF
SENATE CS FOR CS FOR HOUSE BILL NO. 207(RES)
(VERSION B)
MAY 1, 1995

The Senate CS for CS for House Bill No. 207(RES) defines the commissioner's authority to increase, decrease or otherwise adjust the existing royalty terms of oil and gas leases to encourage production under three different circumstances. Presuming that the relevant conditions set forth in the bill are met, the commissioner would be authorized: 1) under (j)(1)(A), to increase, decrease or adjust the royalty terms of leases overlying delineated fields from which oil or gas has not been produced for sale previously, 2) under (j)(1)(B), to increase, decrease or adjust the royalty terms of leases within producing fields where the field's operating costs exceed revenues, and are likely to continue to do so absent royalty increase, decrease or adjustment, and 3) under (j)(1)(C), to increase, decrease or adjust the royalty rates of leases within shut-in fields to re-establish production that would not otherwise be economically feasible. The authority to grant an increase, decrease or otherwise adjust royalty rates under (j)(1)(A) expires March 15, 1999. For (j)(1)(B) and (j)(1)(C) there is no sunset date.

Section 1

This section amends AS 36.30.850(b)(33) by adding a new paragraph which exempts the commissioner's selection of a qualified contractor to assist in the review of an application to increase, decrease or otherwise adjust royalty rates from the provisions of the State Procurement Code. Contractors' qualifications are described in Section 2, subsection (j)(7), below.

Section 2

This section amends AS 38.05.187(j) as provided below.

Subsection (1)(1)

This subsection clarifies that, before the commissioner may increase, decrease or otherwise adjust a royalty rate, the field must be delineated "sufficiently to allow the commissioner to conduct the analyses and make the findings required ..." instead of relying upon the more subjective standard of "sufficiently to the satisfaction of the commissioner..." which was specified in an earlier version of the bill. This change was made to reinforce the expectation that the commissioner's decisions to increase, decrease or adjust royalty rates will be well reasoned and supported by the record. This standard should encourage greater accountability, reducing the likelihood of disputes over whether the commissioner was "satisfied" with too little information before making a decision to increase, decrease or adjust royalty rates.

Subsections (1)(A), (1)(B) and (1)(C) clarify that any royalty increase, decrease or adjustment will be based upon the economic feasibility of production from the entire oil or gas field and not from a "pool or portion of the field or pool." This will provide the state a safeguard against potential abuse of the royalty amendment provisions which might arise if the inquiry of what production is economically feasible is focused only on selected leases, portions of leases or vertically segregated zones underlying leases within a field.

The intent is to assure that, when royalties are increased, decreased or adjusted, the state will have the opportunity to share on the upside to the same extent it agrees to accept additional risk on the downside. By focusing this legislation on field-wide economics, the likelihood is reduced that the state will be asked to participate only in the sharing of costs for the most expensive wells within a field while being denied the opportunity to share more equitably in the revenues from more economical wells.

Subsection (1)(2)

This subsection establishes the general standards for any royalty increase, decrease or adjustment to be a "clear and convincing showing that an increase, decrease or adjustment of royalty meets the requirements of this subsection and is in the best interests of the state." It also places the burden of proof for making that showing on the lessee.

Subsection (j)(3)

This subsection directs the commissioner to condition any royalty increase, decrease or adjustment in any way necessary to protect the state's best interest." The Senate Resources Committee CS establishes the requirement that the commissioner describe in a written findings and determination the assumptions upon which an increase, decrease or adjustment is based, and set forth the terms and conditions, which may include the substitution of a sliding scale royalty, a share of net profits or other mechanisms that will be applied to increase, decrease or adjust the state's royalty share if the assumptions upon which the commissioner relied are subsequently determined either to have underestimated or overestimated the economic feasibility of the field's development without the royalty increase, decrease or adjustment.

Subsection (j)(4)

This subsection sets forth explicit limitations on the commissioner's authority to grant a royalty increase, decrease or adjustment. With respect to delineated but previously non-producing fields (j)(IXA), the Senate Resources Committee CS would forbid an increase, decrease or adjustment of royalty rates without prior legislative approval if the anticipated total value of a proposed reduction or adjustment exceeds ten million dollars, or if the increase, decrease or adjustment would establish a royalty rate of less than five percent in amount or value of production removed or sold. With respect to non-economic producing (j)(IXB) and shut-in fields (j)(IXC) the commissioner may not adjust royalty rates below a floor of three percent in amount or value of the production removed or sold.

Subsection (j)(5)

This subsection requires the commissioner to condition any royalty increase, decrease or adjustment with an explicit notice that the increase, decrease or adjustment may not be assigned without the prior written approval of the commissioner. It further specifies that the commissioner's approval shall be based upon a determination that the proposed assignment complies with the provisions of subsection (j)(1), and is in the best interests of the state.

Subsection (j)(6)

This subsection establishes the requirement that the applicant submit supporting financial and technical data with an application for a royalty increase, decrease or adjustment. It defines the categories of information which may be required, and provides for the confidentiality of documents submitted in support of an application to increase, decrease or adjust the royalty rate.

The Senate Resources Committee CS makes explicit that the commissioner will require data necessary to make an informed decision on an application to increase, decrease or otherwise adjust royalty rates. In addition, the limitation of the commissioner's authority to require any information other than financial and technical data relating to "production", which appeared in an earlier version of the bill, has been deleted, clarifying that the scope of the commissioner's inquiry may include financial and technical data relating to development, transportation and marketing of oil and gas, as well as production, if the commissioner determines that those data are necessary to properly evaluate an application.

The subsection also defines the confidentiality principles which will apply to information submitted in support of an application to adjust royalties. Except for data submitted under the provisions of subsection (j)(10) of the bill, to the legislature or to the Legislative Budget and Audit Committee, the data will remain confidential under the provisions of AS 38.05.035(a)(9) upon lessee's request. In other words, as to the public, the information will remain confidential.

Subsection (j)(7)

This subsection confirms the commissioner's authority to require the applicant to pay for the services of an independent contractor to assist the commissioner in reviewing an application to increase, decrease or otherwise adjust royalty rates. Relative to an earlier version of the bill, the contractor's qualifications have been expanded to include the ability to evaluate hydrocarbon production, development, transportation, and marketing economics.

Subsection (1)(8)

This subsection establishes the requirement that the commissioner make and publish a preliminary findings and determination on royalty adjustment applications, give reasonable public notice of the preliminary findings and determination and provide for a 30-day public comment period.

Subsection (1)(9)

This subsection defines a list of issues, (1)(9)(A)-(1)(9)(D), which the commissioner must address in any written finding and determination for a royalty increase, decrease or adjustment.

Subsection (1)(10)

This subsection sets forth the procedures and timelines to be followed for a proposed increase, decrease or adjustment of royalty rates which requires legislative approval—both for those instances when the legislature is in session, as well as when it is not in session (subsections (1)(10)(A) and (1)(10)(B)). Under the provisions, of (1)(10)(A), when the legislature is in session, the commissioner may appear, before one or more of standing or special committees of each house to provide the committee a review of those findings and determinations, and the supporting financial and technical data. If the applicant has requested confidentiality for data, the commissioner may appear in executive session.

Under (1)(10)(B), for applications requiring legislative approval when the legislature is not in session and for other applications as well, the commissioner shall offer to appear before the Legislative Budget and Audit Committee, again no earlier than 10 days and no later than 20 days after public notice has been given, to provide the committee an opportunity to review the preliminary findings and determination and supporting data. This subsection also provides that, if the LBA accepts the commissioner's offer, it will give notice of the committee's meeting to all members of the legislature.

Subsection (j)(11)

This subsection provides that the commissioner shall make copies of the preliminary findings and determination for a proposed increase, decrease or adjustment of a royalty rate to the presiding officer of each house; the chairs of the legislature's standing committees on resources; and the chairs of the legislature's special committees on oil and gas, if any.

Subsection (j)(12)

This subsection defines the separate timelines and administrative procedures to be followed in summarizing the public comment, preparing and distributing the final findings and determination and amending the leases to reflect adjustment of royalty rates, depending upon whether or not the proposed adjustment requires prior legislative approval, and if so, depending upon whether or not the legislature is in session. The subsection also contains language affirming that the commissioner's decision, as regards the applicant, is final and not appealable to the court.

For those adjustments not requiring prior legislative approval, the commissioner shall, within 30 days of the close of the public comment period, prepare a summary of the public responses and make a final findings and determination. For those adjustments which require prior legislative approval, the commissioner must prepare a summary of the public response, and submit a proposed findings and determination either to the legislature, if it is in session, or to the LB&A if the legislature is not in session, within 30 days after the close of the public comment period.

If the legislature is in session and does not act within 80 days of the start of public comment period to disapprove the commissioner's proposed final finding and determinations by enacting legislation, the commissioner shall issue a final findings and determination.

If the legislature is not in session, the LB&A shall review and approve or disapprove the proposed final findings and determination. If the LB&A does not act within 80 days of the beginning of the public comment period, to disapprove, by majority vote of the committee's full membership, the commissioner shall issue the final findings and determination.

The subsection also directs the commissioner to provide copies of the findings to the lessee or lessees, and with their consent to amend the lease(s) or unit agreement(s) to reflect the increase, decrease or adjustment consistent with the terms of the findings and determination. It also requires that copies of the final findings and determination be provided to each person who submitted comments during the public comment period and who filed a request for copies.

Subsection (j)(13)

This subsection clarifies that the commissioner may, under the authorities vested by this bill, increase, decrease or adjust the royalty provisions of leases arising from conversion of Exploration Licenses.

Section 3

Section 3 amends the provisions of AS 38.05.180(p) to clarify that the commissioner may not increase, decrease or otherwise adjust royalty on leases in connection with a cooperative or unit plan except as provided in AS 38.05.180(p), as amended by this bill.

Section 4

Section 4 amends the provisions of AS 38.05.180(s) to clarify that the commissioner may not increase, decrease or otherwise adjust royalty on leases in connection with a communization or drilling agreement except as provided in AS 38.05.180(s), as amended by this bill.

Section 5

Section 5 amends the provisions of AS 38.05.180(t) to clarify that the commissioner may not increase, decrease or otherwise adjust royalty on a lease or leases that are subject to a drilling or development contract except as provided in (j) of this section, as amended by this bill.

Section 6

Section 6 provides for an immediate effective date under AS 01.10.070(c).

Comparison of HB 207 Versions.

	Governor's Version	House Version	Senato Version
	Non-producing fields		
Types of Leases	Uneconomic fields	Same	Same
	Shut-in fields		
Royalty Floor	Before '78--75% (3.125%)	Non-producing 75% (3.125%)	Non-producing 5% (60%)
(assuming 12.5% royalty)	After '78--50% (6.25%)	Uneconomic 90% (1.25%)	Uneconomic 3% (76%)
Legislative Oversight	None	Advisory	Cumpulsory when greater than \$10 million for non-producing fields.
Sunset	None	None	Authority to grant ends March 15, 1999 for non-producing fields.
Commisioner's Findings	No Criteria	No Criteria	Establishes criteria to be addressed.
	Selected by commissioner.	Selected by applicant from DNR	Selected by DNR.
3rd Party Analyses	Costs paid by applicant.	short list.	Costs paid by applicant.
		Costs paid by applicant.	
Assignability	Not addressed.	Not addressed.	With Commisioner's prior approval.

SECTIONAL ANALYSIS
OF
SENATE CS FOR CS FOR HOUSE BILL NO. 207(RES)

APRIL 26, 1995

The Senate CS for CS for House Bill No. 207(RES) defines the commissioner's authority to adjust the existing royalty terms of oil and gas leases to encourage production under three different circumstances. Presuming that the relevant conditions set forth in the bill are met, the commissioner would be authorized: 1) to adjust the royalty terms of leases overlying delineated fields from which oil or gas has not been produced for sale previously (j)(1)(A), 2) to adjust the royalty terms of leases within producing fields where the field's operating costs exceed revenues, and are likely to continue to do so absent royalty relief (j)(1)(B), and 3) to adjust the royalty rates of leases within shut-in fields to re-establish production that would not otherwise be economically feasible. The authority to grant an adjustment of royalty rates under (j)(1)(A) expires January 31, 1998.

Subsection (j)(1)

Subsection (j)(1)(A) clarifies that, before the commissioner may adjust a royalty rate, the field must be delineated "sufficiently to allow the commissioner to conduct the analyses and make the findings required ..." instead of relying upon the more subjective standard of "sufficiently to the satisfaction of the commissioner..." which was specified in an earlier version of the bill. This change was made to reinforce the expectation that decisions to adjust royalty rates will be well reasoned and supported by the record. This standard should encourage greater accountability, reducing the likelihood of disputes over whether the commissioner was "satisfied" with too little information before making a decision to modify royalty rates.

Both subsections (j)(1)(A) and (j)(1)(B) clarify that any royalty adjustment will be based upon the economic feasibility of production from the entire oil or gas field and not from a "pool or portion of the field or pool." This will provide the state a safeguard against potential abuse of the royalty modification provisions which might arise if the inquiry of what production is economically feasible is focused only on selected leases, portions of leases or vertically segregated zones underlying leases within a field.

All oil and gas fields, including the most prolific and economically viable fields, will have areas within the field which are not economically feasible to produce on a stand-alone basis. Similarly, many fields, including Prudhoe Bay, have multiple pay zones, some of which are "marginal" relative to others from which production may be highly profitable. The field, however, when considered on the basis of its total production, may be very economic. Deletion of the "pool, or portion of the field or pool" language contained in an earlier version of the bill will make it less likely that applicants will be able to selectively define "production" to make development of an otherwise economical field appear marginal or uneconomic.

Subsection (j)(2)

This subsection establishes the general standards for any royalty adjustment to be a "clear and convincing showing that a modification of royalty meets the requirements of this subsection and is in the best interests of the state." It also places the burden of proof for making that showing on the lessee.

Subsection (j)(3)

This subsection directs the commissioner to condition a royalty adjustment "in any way necessary to protect the state's best interest." The Senate Resources Committee CS makes explicit that the commissioner must provide for subsequent adjustment "to restore or increase" the state's royalty share if the assumptions upon which a decision to adjust the royalty rate was based are determined to have been in error, and as a consequence to have underestimated the economic feasibility of the field's development absent a royalty reduction.

Subsection (j)(4)

This subsection sets forth explicit limitations on the commissioner's authority to grant royalty adjustments. With respect to delineated but previously non-producing fields, the Senate Resources Committee CS would forbid adjustment of royalty rates without prior legislative approval if the anticipated total value of the proposed reduction exceeds five million dollars or if the adjustment would exceed 50 percent of the royalty originally specified in the lease. The benefits of any adjustment granted non-producing fields under (j)(1)(A) expire December 31, 2002, and effective January 1, 2003, the royalty rate in effect immediately before adjustment is re-established. With respect to non-economic producing and shut-in fields, the commissioner may not adjust royalty rates below a floor of three percent in amount or value of the production removed or sold.

Subsection (j)(5)

This subsection requires the commissioner to condition any royalty adjustment with an explicit notice that the adjustment may not be assigned.

Subsection (j)(6)

This subsection establishes the requirement that the applicant submit supporting financial and technical data with an application for royalty adjustment, defines the categories of information which may be required, and provides for the confidentiality of documents submitted in support of an application to adjust the royalty rate.

The Senate Resources Committee CS makes explicit that the commissioner will require data necessary to make an informed decision on an application to modify royalty rates. In addition, the limitation of the commissioner's authority to require any information other than financial and technical data relating to "production", which appeared in an earlier version of the bill, has been deleted, clarifying that the scope of the commissioner's inquiry may include financial and technical data relating to development, transportation and marketing of oil and gas, as well as production, if the commissioner, in his discretion, determines that those data are necessary to properly evaluate an application.

The subsection also defines the confidentiality principles which will apply to information submitted in support of an application to adjust royalties. Except for data submitted to the Legislative Budget and Audit Committee, its staff or agents, the data will remain confidential upon lessee's request.

Subsection (j)(7)

This subsection confirms the commissioner's authority to require the applicant to pay for the services of an independent contractor to assist the commissioner in reviewing an application to adjust royalty rates. Relative to an earlier version of the bill, the contractor's qualifications have been expanded to include the ability to evaluate hydrocarbon production, development, transportation, and marketing economics.

Subsection (j)(8)

This subsection establishes the requirement that the commissioner make and publish a preliminary findings and determination on royalty adjustment applications, give reasonable public notice of the preliminary findings and determination and provide for a 60-day public comment period.

Subsection (j)(9)

This subsection defines a list of issues, (9)(A)-(9)(G), which the commissioner must address in any written finding and determination for a royalty adjustment.

Subsection (j)(10)

This subsection establishes the requirement that the commissioner offer to appear before the Legislative Budget and Audit Committee, in executive session or otherwise as determined by the committee to be appropriate, to provide a review of the supporting data, as well as the preliminary findings and determination on an application to adjust royalty rates, and establishes the obligation of the committee to provide notice to all members of the legislature if the commissioner's offer is accepted. The commissioner's offer to appear

must occur no earlier than 20 days and no later than 40 days after giving the public notice of the preliminary findings and determination required under subsection (j)(8).

Subsection (j)(11)

This subsection provides that the commissioner shall make copies of the preliminary findings and determination for a proposed adjustment of a royalty rate to the presiding officer of each house; the chairs of the legislature's standing committees on resources; and the chairs of the legislature's special committees on oil and gas, if any.

Subsection (j)(12)

This subsection defines the separate timelines and administrative procedures to be followed in summarizing the public comment, preparing and distributing the final findings and determination and amending the leases to reflect adjustment of royalty rates, depending upon whether or not the proposed adjustment requires prior legislative approval. The subsection also contains language affirming that the commissioner's decision, in either case, is final and not appealable to the court.

For those adjustments not requiring prior legislative approval, the commissioner shall, within 30 days of the close of the public comment period, prepare a summary of the public responses and make a final findings and determination. For those adjustments which require prior legislative approval, the commissioner must prepare and submit a proposed findings and determination to the legislature which must pass a bill authorizing the adjustment before it becomes effective.

Subsection (j)(13)

This subsection clarifies that the commissioner may, under the authorities vested by this bill, modify the royalty provisions of leases arising from conversion of Exploration Licenses.

Sections 2

Section 2 amends the provisions of AS 38.05.180(p) to clarify that the commissioner may not adjust royalty on leases in connection with a cooperative or unit plan except as provided in AS 38.05.180(p), as amended by this bill.

Section 3

Section 3 amends the provisions of AS 38.05.180(s) to clarify that the commissioner may not adjust royalty on leases in connection with a communization or drilling agreement except as provided in AS 38.05.180(s), as amended by this bill.

Section 4

Section 4 amends the provisions of AS 38.05.180(t) to clarify that the commissioner may not adjust royalty on a lease or leases that are subject to a drilling or development contract except as provided in (j) of this section, as amended by this bill.

Section 5

This section provides for an immediate effective date under AS 01.10.070(c).

9-GH0039S
Cbenoweth
4/26/95

SENATE CS FOR CS FOR HOUSE BILL NO. 207(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR
A BILL

FOR AN ACT ENTITLED

1 "An Act relating to adjustments to royalty reserved to the state to encourage
2 otherwise uneconomic production of oil and gas; and providing for an effective
3 date."

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

5 • Section 1. AS 38.05.180(j) is amended to read:

6 (j) The [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS
7 FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR
8 GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE]
9 commissioner

10 (1) may provide for an adjustment [SHALL ADOPT REGULATIONS
11 TO ALLOW REDUCTION] of royalty on individual leases, leases unitized as
12 described in (p) of this section, leases subject to an agreement described in (s) or (t)
13 of this section, or interests unitized under AS 31.05; the commissioner may act
14 under this subsection to adjust the royalty

1 (A) after the effective date of this Act and not later than
2 January 31, 1998, to allow for production from an oil or gas field if

3 (i) the oil or gas field has been delineated sufficiently
4 to allow the commissioner to conduct the analyses and make the
5 findings required by this subsection;

6 (ii) the field has not previously produced oil or gas for
7 sale; and

8 (iii) oil or gas production from the field would not
9 otherwise be economically feasible;

10 (B) to prolong the economic life of an oil or gas field when the
11 field's operating costs exceed its revenue and, without a royalty adjustment,
12 are likely to continue to do so; or

13 (C) to reestablish production of shut-in oil or gas that would
14 not otherwise be economically feasible;

15 (2) [THE COMMISSIONER] may not grant a [REDUCTION OF]
16 royalty adjustment unless the lessee or lessees requesting the adjustment
17 [REDUCTION] makes a clear and convincing showing that an adjustment of royalty
18 meets the requirements of this subsection and is in the best interests of the state;

19 (3) shall

20 (A) [THE REVENUE FROM THE LESSEE'S SHARE OF ALL
21 HYDROCARBONS PRODUCED FROM THE FIELD IS AND IS LIKELY TO
22 CONTINUE TO BE INSUFFICIENT TO PRODUCE A REASONABLE RATE
23 OF RETURN WITH RESPECT TO THE LESSEE'S TOTAL INVESTMENT IN
24 THE FIELD. THE COMMISSIONER MAY] condition any [A] royalty
25 adjustment [REDUCTION] granted under this subsection in any way necessary
26 to protect the state's best interests;

27 (B) provide for subsequent adjustment to restore or increase
28 the state's royalty share if the assumptions upon which the adjustment is
29 based, including projected production rate or volume, predicted ultimate
30 recovery, or development and operating costs, are subsequently determined
31 to have been in error and, as a consequence, to have underestimated the
32 economic feasibility of the field's development without a royalty adjustment;

1 (4) may not grant a royalty adjustment for a field

2 (A) under (1)(A) of this subsection

3 (i) if the anticipated aggregate value of the proposed
4 royalty adjustment is a reduction that would exceed \$5,000,000, or if
5 the royalty adjustment is a reduction that exceeds 50 percent of the
6 royalty originally specified in a lease entered into under the
7 provisions of (f) of this section or AS 38.05.134, unless the
8 commissioner and the royalty adjustment applicant agree that the
9 adjustment may not take effect unless approved by the legislature
10 under (12)(B)(ii) of this subsection and the commissioner first obtains
11 approval of the adjustment under that legislative approval provision;

12 (ii) that allows a royalty adjustment that is a reduction
13 to extend beyond December 31, 2002; for royalty that has been
14 reduced by the commissioner for the reason set out in (1)(A) of this
15 subsection, on and after January 1, 2003, the lessee or lessees shall
16 pay the royalty rate that was in effect immediately before reduction
17 of the rate by the commissioner under (1)(A) of this subsection;

18 (B) under (1)(B) or (1)(C) of this subsection if the royalty
19 adjustment for the field would establish a royalty rate of less than three
20 percent in amount or value of the production removed or sold from a lease
21 or leases covering the field;

22 (5) may not grant a royalty adjustment under this subsection without
23 including an explicit condition that the royalty adjustment is not assignable;

24 (6) shall require the lessee or lessees to submit, with the application
25 for the royalty adjustment, financial and technical data that demonstrate that the
26 requirements of this subsection are met; the commissioner

27 (A) shall require disclosure of the financial and technical data
28 relating to development, production, transportation, and marketing of oil
29 and gas from the field that, in the commissioner's sole discretion, are
30 necessary to make a determination as to whether or not to grant the request
31 for royalty adjustment; and

32 (B) shall, except for the data disclosed under (10) of this

1 subsection to the Legislative Budget and Audit Committee and its staff or
2 agents, keep the data confidential under AS 38.05.035(a)(9) upon the lessee's
3 request;

4 (7) may require the lessee or lessees making application for the
5 royalty adjustment to pay for the services of an independent contractor, qualified
6 to evaluate hydrocarbon development, production, transportation, and marketing
7 economics, who is selected by the commissioner to assist the commissioner in
8 evaluating the application and financial and technical data;

9 (8) shall make and publish a preliminary findings and determination
10 on the royalty adjustment application, give reasonable public notice of the
11 preliminary findings and determination, and invite public comment on the
12 preliminary findings and determination during a 60-day period for receipt of public
13 comment;

14 (9) shall address in any findings and determinations required under
15 this subsection

16 (A) the revenue needs and projected fiscal condition of the
17 state during the period of the proposed royalty adjustment;

18 (B) the projected effects of the proposed royalty adjustment
19 on the state's revenue needs;

20 (C) the likelihood that the proposed royalty adjustment will
21 result in incremental capital investment or other beneficial spending within
22 the state, and the steps taken by the commissioner in conditioning the
23 royalty adjustment to assure that anticipated investments or other beneficial
24 spending within the state occur;

25 (D) the projected social effects of the proposed royalty
26 adjustment, including its effects on the employment of Alaskans and the use
27 of in-state contractors and suppliers;

28 (E) the projected effects of the proposed royalty adjustment
29 upon existing and potential new commercial enterprise, competition, and
30 patterns of investments within the state;

31 (F) alternatives to the proposed royalty adjustment; and

32 (G) any other matter considered relevant to the findings and

1 determinations;

2 (10) shall offer to appear before the Legislative Budget and Audit
3 Committee, in executive session or otherwise as determined by the committee to be
4 appropriate, on a day that is not earlier than 20 days and not later than 40 days
5 after giving public notice under (8) of this subsection, to provide the committee and
6 its staff and agents a review of the commissioner's preliminary findings and
7 determination on the royalty adjustment application and the supporting data; if the
8 Legislative Budget and Audit Committee accepts the commissioner's offer, the
9 committee shall give notice of the committee's meeting to all members of the
10 legislature;

11 (11) shall make copies of the preliminary findings and determination
12 available to

13 (A) the presiding officer of each house (INTEREST,
14 INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE
15 EVENT OF AN INCREASE IN THE PRICE OF OIL OR GAS. BEFORE
16 APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL
17 MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE
18 MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE
19 WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR
20 THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS)
21 of the legislature;

22 (B) the chairs of the legislature's standing committees on
23 resources; and

24 (C) the chairs of the legislature's special committees on oil
25 and gas, if any;

26 (12) shall,

27 (A) for a royalty adjustment that does not, under (4)(A)(ii) of
28 this subsection, require legislative approval, within 30 days after the close of
29 the public comment period under (8) of this subsection,

30 (i) prepare a summary of the public response to the
31 commissioner's preliminary findings and determination;

32 (ii) make a final findings and determination; the

1 commissioner's final findings and determination prepared under this
2 subparagraph regarding royalty adjustment is, as to the royalty
3 adjustment applicant, final and not appealable to the court;

4 (B) for a royalty adjustment that, under (4)(A)(i) of this
5 subsection, requires legislative approval, within 30 days after the close of the
6 public comment period under (8) of this subsection,

7 (i) prepare a summary of the public response to the
8 commissioner's preliminary findings and determination;

9 (ii) make a proposed final findings and determination
10 and shall submit it to the legislature; if the legislature approves the
11 commissioner's proposed final findings and determination by enacting
12 legislation, the commissioner shall issue a final findings and
13 determination; the commissioner's final findings and determination
14 prepared under this subparagraph regarding royalty adjustment is,
15 as to the royalty adjustment applicant, final and not appealable to the
16 court;

17 (C) transmit a copy of the final findings and determination
18 prepared under (A) or (B) of this paragraph to the lessee;

19 (D) with the applicant's consent, amend the applicant's lease
20 or unitization agreement consistent with the commissioner's final findings
21 and determination; and

22 (E) make copies of the final findings and determination
23 available to each person who submitted comment under (8) of this subsection
24 and who has filed a request for the copies;

25 (13) is not limited by the provisions of AS 38.05.134(3) or (D) of this
26 section in the commissioner's determination under this subsection.

27 • Sec. 2. AS 38.05.180(p) is amended to read:

28 (p) To conserve the natural resources of all or a part of an oil or gas pool, field,
29 or like area, the lessees and their representatives may unite with each other, or jointly
30 or separately with others, in collectively adopting or operating under a cooperative or a
31 unit plan of development or operation of the pool, field, or like area or a part of it, when
32 determined and certified by the commissioner to be necessary or advisable in the public

1 interest. The commissioner may, with the consent of the holders of leases involved,
2 establish, change, or revoke drilling, producing, and royalty requirements of the leases
3 and adopt regulations with reference to the leases, with like consent on the part of the
4 lessees, in connection with the institution and operation of a cooperative or unit plan as
5 the commissioner determines necessary or proper to secure the proper protection of the
6 public interest. The commissioner may not adjust royalty on leases in connection
7 with a cooperative or unit plan except as provided in (j) of this section. The
8 commissioner may require oil and gas leases issued under this section to contain a
9 provision requiring the lessee to operate under a reasonable cooperative or unit plan, and
10 may prescribe a plan under which the lessee must operate. The plan must adequately
11 protect all parties in interest, including the state.

12 • Sec. 3. AS 38.05.180(s) is amended to read:

13 (s) When separate tracts cannot be individually developed and operated in
14 conformity with an established well-spacing or development program, a lease, or a
15 portion of a lease, may be pooled with other land, whether or not owned by the state,
16 under a communication or drilling agreement providing for an apportionment of
17 production or royalties among the separate tracts of land comprising the drilling or
18 spacing unit when determined by the commissioner to be in the public interest.
19 Operations or production under the agreement are considered as operations or production
20 as to each lease committed to the agreement. The commissioner may not adjust
21 royalty on leases in connection with a communication or drilling agreement except
22 as provided in (j) of this section.

23 • Sec. 4. AS 38.05.180(i) is amended to read:

24 (i) The commissioner may prescribe conditions and approve, on conditions,
25 drilling, or development contracts made by one or more lessees of oil or gas leases, with
26 one or more persons, when, in the discretion of the commissioner, the conservation of
27 natural resources or the public convenience or necessity requires it or the interests of the
28 state are best served. All leases operated under approved drilling or development
29 contracts and interests under them, are excepted in determining holding or control under
30 AS 38.05.140. The commissioner may not adjust royalty on a lease or leases that
31 are subject to a drilling or development contract except as provided in (j) of this
32 section.

1

- Sec. 5. This Act takes effect immediately under AS 01.10.070(c).



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: Jack Chenoweth, Attorney
Legal Services
via fax: 2029 2 pages

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: April 26, 1995 Second FAX

RE: Senate Resources CS for HB 207 (GH0039P) 4/25/95

Please incorporate the additional changes into a Resources Committee substitute for HB 207, Adjustments to Oil and Gas Royalties.

- 1) Page 3, line 11: DELETE [1999] Insert 2002
- 2) Page 3, Line 13: DELETE [2000] Insert 2003
- 3) Page 3, Line 18: DELETE [five] Insert three
- 4) Page 6, subsection ii Beginning at line 8:

In this section, (for adjustments requiring legislative approval) we had set up the L.B&A committee to receive the commissioner's proposed findings if the legislature is not in session and to have the findings referred to L.B&A if the legislature is in session.

DELETE the reference to anything being referred to L.B&A. The full legislature will receive the proposed final findings and determination. The full legislature will then have to enact legislation to approve the adjustment. This is where I would like to use language similar to the royalty oil contract approval process in AS 36.06.055. (See #8 of the previous fax.) The commissioner still issues a final findings and determination; the commissioner's final findings and determination are still as to the applicant, final and not appealable.

- 5) Number 4 does not affect the section dealing with adjustments which do not require legislative approval, but where the commissioner offers to appear before L.B&A Committee.



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: Jack Chenoweth, Attorney
Legal Services
via fax: 2029 2 pages

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee *(AK)*

DATE: April 26, 1995

RE: Senate Resources CS for HB 207 (GH0039AP) 4/25/95
.....

Please incorporate the following changes into a Resources Committee substitute for HB 207, Adjustments to Oil and Gas Royalties.

- 1) As the title states, these are adjustments - change "modification(s)" or "reduction(s)" wherever they appear to "ADJUSTMENT(S)" (including secs. 2, 3 and 4).
- 2) Page 2, Line 28: DELETE [presumptions] Insert assumptions
You wondered if, in that clause, there are other "presumptions/assumptions" that need to be identified. A list is perhaps never complete, but if, as you say, including means "including, but not limited to" then the things not mentioned on the list of assumptions that are related to an underestimation of the economics of a royalty adjustment wouldn't be precluded from being considered would they?
- 3) Page 3, Line 4: "anticipated aggregate value" is intended to convey that partners will not be awarded \$5,000,000 separately to get around the \$5,000,000 legislative approval trigger. If "total value" conveys the same intent, then use the simpler language.
- 4) Page 3, Line 6: DELETE: [to] Insert of
- 5) Page 6, Line 11: Not sure if this is an editorial comment or not:
DELETE: [subject] and insert submit
- 6) Page 6, Line 29: a person vs any person: The query is: if you leave it "a" person, does that mean that the commissioner could select one person from hundreds who might have submitted comments and filed a request for copies, and make copies of the final findings etc., available only to that person and satisfy this requirement? Or, does this line mean that if a person satisfies the requirements of submitting comments, and filing a request for copies that the commissioner must provide the final findings etc., to each person who does so? If there is any doubt, replace a with any.
- 7) As to your other questions/comments: Your reworking of five percent nominal rate is fine. I think for now, we'll leave the Budget and Audit Committee as the committee considering the adjustments, even when the legislature is in session.

continued next page

8) As to the "unconstitutionality" of the bill: The royalty oil contracts are approved by the Legislature because a contract requirement is that they will be approved by the Legislature. Change the language in the work draft from passing joint resolutions to enacting legislation as is the case in AS 36.06.055. Is it possible to specify that a contract for a royalty adjustment include a provision for legislative approval for a royalty adjustment greater than \$5,000,000?

*to constitutionalize statute
a bill is passed: with a vote*

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 25, 1995

SUBJECT: Draft SCS CSHB 207(Res), authorizing the commissioner of natural resources to make adjustments of royalties payable by state lessees on oil and gas production (Work Order No. 9-GH0039P)

TO: Senator Loren Leman, Chair
Senate Resources Committee
ATTN: Annette Kreitzer

FROM: Jack Chenoweth
Legislative Council

The draft is based on the material supplied

This is a significant piece of legislation and I've made a tactical decision to try to draft it so that its operation is not dependent on adoption of a special effective date provision. Accordingly, I revised paragraph (1)(A) and added language in paragraph (4)(A)(iii) to accommodate the "sunset" provision.

In paragraph (3), AS 01.10.040(b) generally treats the breadth of the term "including." "Including but not limited to" is not necessary. In that clause, are there other "presumptions" -- is that even the correct term? -- that need to be identified?

In paragraph (4), I assume that "reduction" is accurate and would not propose to change the term to "modification" unless you say so.

In paragraph (4)(A)(i), what is meant by "anticipated aggregate value"?

In paragraph (4)(B), is my rewording of "five percent nominal rate" satisfactory?

In paragraph (5), is "reduction" accurate? Should it read "modification"?

As to paragraph (6)(B), should we understand this to mean that disclosure of information may be made to the Budget & Audit Committee (presumably in conjunction with its review) but not to any standing committee in the event this modification is considered by the full legislature in session?

Senator Loren Leman

April 25, 1995

Page 2

In paragraph (12)(A)(ii) and (12)(B)(ii), note my handling of the "is final and not appealable" provision from the House-passed measure

Paragraph (12)(B)'s approval provisions are probably unconstitutional under the separation of powers principle. Even if not found to be unconstitutional for that reason, use of the resolution as the means of signifying approval and, alternatively, sending the matter to the attention of the Budget and Audit Committee when the legislature is not in session, raises other significant constitutional questions going to the manner in which the legislature may be required to pass bills, State v. A.L.V.E. Voluntary, 606 P 2d 769 (Alaska 1980), and to asserted improper delegation of legislative powers. See State v. Fairbanks-North Star Borough, 736 P 2d 1140 (Alaska 1987).

In bill sections 2, 3, and 4, shouldn't references to "reduce" royalty on leases be rewritten to say "modify" royalty on leases?

JBC:klb
95-299:klb

Enclosure

*Can contract ~~now~~ include provision for legislative approval
for RR < \$ million?*



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

MEMO

TO: Jack Chenoweth, Attorney
Legal Services
via fax: 2029 8 pages total

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee *AK*

DATE: April 25, 1995

RE: Resources Committee Substitute for HB 207

Please draft a Resources Committee Substitute for HB 207 using the attached language marked "Draft mark-up of CSHB 207(FIN)am. The mark-up is to the version that passed the House (GH0039N).

Please call me at X4907 if you have questions.

*7:35am
4-25-95*

*Jack -
Disregard first for.
This one includes a few
changes beginning at page 4
(5) change reduction to modification.*

AK

DRAFT MARK-UP OF CSHB 207(FIN) am

April 25, 1995

Note: **Bold text** is suggested new language.

[CAP. TEXT] denotes deletion of current AS 38.05.180 (j) text.

[regular text] denotes suggested deletions of proposed amendments.

Section 1. AS 38.05.180(j) is amended to read:

(j) **The** [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE] commissioner

(1) may [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION] provide for modification of royalty on individual leases, leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05

(A) to allow for production from an oil or gas field, pool, or portion of a field or pool if

(i) the oil or gas field, pool, or portion of the field or pool has been [sufficiently] delineated sufficiently to [the satisfaction of] allow the commissioner to conduct the analyses and make the findings required by this subsection;

(ii) the field, pool, or portion of the field or pool has not previously produced oil or gas for sale; and

(iii) oil or gas production from the field, pool, or portion of the field or pool would not otherwise be economically feasible.

(B) to prolong the economic life of an oil or gas field when the field's operating costs exceed revenues, and absent a royalty modification are likely to continue to do so [pool, or portion of a field or pool as per barrel or barrel equivalent costs increase or as the price of oil or gas decreases, and the increase or decrease is sufficient to make further production no longer feasible] ; or

(C) to re-establish production of shut-in oil or gas that would not otherwise be economically feasible;

Change with

(2) [. THE COMMISSIONER] may not grant a [REDUCTION OF] royalty modification unless the lessee or lessees requesting the modification [change] [REDUCTION] makes [MAKES] a clear and convincing showing that a modification of royalty meets the requirements of this subsection and is in the best interests of the state;



(3) shall [THE REVENUE FROM THE LESSEE'S SHARE OF ALL HYDROCARBONS PRODUCED FROM THE FIELD IS AND IS LIKELY TO CONTINUE TO BE INSUFFICIENT TO PRODUCE A REASONABLE RATE OF RETURN WITH RESPECT TO THE LESSEE'S TOTAL INVESTMENT IN THE FIELD. THE COMMISSIONER MAY] condition any [A] royalty modification [REDUCTION] granted under this subsection in any way necessary to protect the state's best interests; the commissioner shall provide for subsequent modification to restore or increase the state's royalty share if the presumptions upon which the modification is based, including but not limited to projected production rate or volume, predicted ultimate recovery, or development and operating costs are subsequently determined to have been in error, and as a consequence to have underestimated the economic feasibility of the field's development absent a royalty modification [an increase or decrease or other modification of the state's royalty share by a sliding scale royalty or other mechanism that shall be based upon a change [INTEREST, INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE EVENT OF AN INCREASE] in the price of oil or gas and may also be based on other relevant factors such as a change in production rate, projected ultimate recovery, development costs and operating costs [;

(4) may not grant a royalty reduction for a field, pool, or portion of a field or pool

(A) under (1)(A) of this subsection, if the anticipated aggregate value of the proposed reduction exceeds five million dollars without prior approval of the legislature; or that exceeds 50 [75] percent of the royalty originally specified in a lease entered into under the provisions of (f) of the section or AS 38.05.134;

(B) under (1)(B) or (1)(C) of this subsection that would reduce the royalty rate below a nominal 5 percent [exceeds 90 percent of the royalty originally specified in a lease entered into under the provisions of (f) of this section or AS 38.05.134] ; or

(C) under either (1)(A), (1)(B) or (1)(C) of this subsection without an explicit condition that the royalty modification is not assignable;

(5) shall require the lessee or lessees to submit, with the application for the royalty modification, financial and technical data that demonstrate [s] that the requirements of this subsection are met; the commissioner

(A) shall [may] require disclosure of [only] the financial and technical data relating to development, production, transportation and marketing of oil and gas from the field that, in the commissioner's sole discretion, are deemed necessary to support a determination of whether or not to grant the request for royalty modification [that is reasonably available to the applicant] , and

(B) shall, with the exception of disclosure to the Legislative Budget and Audit Committee and its staff or agents, keep the data confidential under AS 38.05.035(a)(9) upon the lessee's request;

(6) may require the lessee or lessees making application [for the royalty modification [reduction] to [retain and] pay for the services of an independent contractor, selected by the commissioner [lessee or lessees from a list of qualified consultants in hydrocarbon production and economics provided by the commissioner] , that is qualified to evaluate hydrocarbon development, production, transportation and marketing economics, to assist the commissioner in evaluating

the application and financial and technical data [when the commissioner requires the lessee or lessees to retain the services of a contractor, the commissioner shall determine the relevant scope of the work to be performed by the contractor] ;

(7) shall make and publish a preliminary findings and determination on the royalty modification [reduction] application, give reasonable public notice of the preliminary findings and determination, and invite public comment on [to] the preliminary findings and determination during a 60-day [30-day] period for receipt of public comment;

(8) shall address in findings and determinations required under paragraphs (7), (10) and (11) of this subsection

(A) the revenue needs and projected fiscal condition of the state during the period of the proposed modification;

(B) the projected impacts of the proposed modification on the state's revenue needs;

(C) the likelihood that the proposed modification will result in incremental capital investment, and/or other beneficial spending within the state, and the steps taken by the commissioner in conditioning the modification to assure that anticipated investments and/or other projected state benefits occur;

(D) the projected social impacts of the proposed modification, including its effects on the employment of Alaskans and the use of in-state contractors and suppliers;

(E) the projected effects of the proposed modification upon existing and potential new commercial enterprise, competition and patterns of investments within the state;

(F) alternatives to the proposed modification; and

(G) any other matter considered relevant to the findings and determinations;

(9) [8] shall offer to appear before the Legislative Budget and Audit Committee, in executive session or otherwise as determined by the committee to be appropriate, on a day that is not earlier than 20 [10] days and not later than 40 [20] days after giving public notice under (7) of this subsection, to provide the committee, its staff and agents, a review of the commissioner's preliminary findings and determination on the royalty modification [reduction] application and the supporting data [administrative process]: if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to all members of the legislature [of the committee's meeting]:

*having and recommending
... by ...
... of ...*

(10) [9] shall make copies of the preliminary findings and determination available to

(A) the presiding officer of each house [. BEFORE APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS] [of the legislature] :

(B) the chairs of the legislature's standing committees on resources ; and

(C) the chairs of the legislature's special committees on oil and gas, if any;

... 2014/10/10 ...

(11) [10] shall, for a royalty modification not requiring legislative approval as specified in (j)(4)(a) of this subsection within 30 days after the close of the public comment period under (7) of this subsection.

(A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(B) make a final findings and determination;

(12) shall, for a proposed royalty reduction requiring legislative approval under (j)(4)(a) of this subsection, within 30 days after close of the public comment period,

(A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(B) make a proposed final findings and determination, and submit it to the legislature for its consideration; upon legislative approval, the commissioner may issue the final findings and determination; the commissioner's final findings and determination prepared under paragraph (10) or (11) regarding royalty modification [reduction]

(i) is, as to the applicant, final and not appealable to the superior court; [is final and not appealable to the court]

(C) transmit a copy of the final findings and determination to the lessee or lessees;

(D) with the applicant's consent, amend the applicant's lease or unitization agreement consistent with the commissioner's final decision, and;

(E) make copies of the final findings and determination available to a person who submitted comment under (7) of this subsection and who filed a request for the copies;

(13) (1) is not limited by the provisions of AS 38.05.134(3) or (f) of this section in the commissioner's determination under this subsection.

Sections 2-5 to remain as they appear in CS FOR HOUSE BILL NO.
207(FIN) am

Add new sections 6 and 7 as follows:

Sec. 6 The provisions of AS 38.05.180(j)(1)(A) are repealed January 31, 1998.

Sec. 7 Any modification of royalty granted under the provisions of AS 38.05.180(j)(1)(A) is rescinded on December 31, 1999, at which time the royalty rate effective prior to modification is re-established.

①

Define "modification" to mean substitution of a sliding scale royalty which has upgrade potential equal to the sliding scale.

②

Make sure a modification does not take into account anything which was part of the competitive lease bidding process. This means no lease bids where the royalty share is part of the bid, be sure the costs of the bid, not considered in "operating cost" and same for profit shares which were part of the bid.

9-GH0039AP
Chenoweth
4/25/95

SENATE CS FOR CS FOR HOUSE BILL NO. 207(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to adjustments to royalty reserved to the state to encourage
2 otherwise uneconomic production of oil and gas; and providing for an effective
3 date.

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

5 * Section 1. AS 38.05.180(j) is amended to read:

6 (j) The [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS
7 FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR
8 GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE]
9 commissioner

10 (1) may [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION]
11 provide for modification of royalty on individual leases, leases unitized as described
12 in (p) of this section, leases subject to an agreement described in (s) or (t) of this
13 section, or interests unitized under AS 31.05; the commissioner may act under this
14 subsection to modify the royalty

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modification:

(4) may not grant a royalty reduction for a field

(A) under (1)(A) of this subsection

(i) if the anticipated aggregate value of the proposed royalty reduction would exceed \$5,000,000 unless the commissioner first obtains legislative approval of the modification;

(ii) if the royalty reduction exceeds 50 percent of the royalty originally specified in a lease entered into under the provisions of (D) of this section or AS 38.05.134;

(iii) that allows the royalty reduction to extend beyond December 31, 1999; for oil and gas royalty that has been modified by the commissioner for the reason set out in (1)(A) of this subsection, on and after January 1, 2000, the lessee or lessees shall pay the royalty rate that was in effect immediately before modification of the rate by the commissioner under (1)(A) of this subsection;

(B) under (1)(B) or (1)(C) of this subsection if the royalty reduction for the field would establish a royalty rate of less than five percent in amount or value of the production removed or sold from a lease or leases covering the field;

(5) may not grant a royalty reduction under this subsection without including an explicit condition that the royalty modification is not assignable;

(6) shall require the lessee or lessees to submit, with the application for the royalty modification, financial and technical data that demonstrate that the requirements of this subsection are met; the commissioner

(A) shall require disclosure of the financial and technical data relating to development, production, transportation, and marketing of oil and gas from the field that, in the commissioner's sole discretion, are necessary to make a determination as to whether or not to grant the request for royalty modification; and

(B) shall, except for the data disclosed under (10) of this subsection to the Legislative Budget and Audit Committee and its staff or

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agents, keep the data confidential under AS 38.05.035(a)(9) upon the lessee's request;

(7) may require the lessee or lessees making application for the royalty modification to pay for the services of an independent contractor, qualified to evaluate hydrocarbon development, production, transportation, and marketing economics, who is selected by the commissioner to assist the commissioner in evaluating the application and financial and technical data;

(8) shall make and publish a preliminary findings and determination on the royalty modification application, give reasonable public notice of the preliminary findings and determination, and invite public comment on the preliminary findings and determination during a 60-day period for receipt of public comment;

(9) shall address in any findings and determinations required under this subsection

(A) the revenue needs and projected fiscal condition of the state during the period of the proposed royalty modification;

(B) the projected effects of the proposed royalty modification on the state's revenue ~~needs~~;

(C) the likelihood that the proposed royalty modification will result in incremental capital investment or other beneficial spending within the state, and the steps taken by the commissioner in conditioning the royalty modification to assure that anticipated investments or other beneficial spending within the state occur;

(D) the projected social effects of the proposed royalty modification, including its effects on the employment of Alaskans and the use of in-state contractors and suppliers;

(E) the projected effects of the proposed royalty modification upon existing and potential new commercial enterprise, competition, and patterns of investments within the state;

(F) alternatives to the proposed royalty modification; and

(G) any other matter considered relevant to the findings and determinations;

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1 (10) shall offer to appear before the Legislative Budget and Audit
2 Committee, in executive session or otherwise as determined by the committee to be
3 appropriate, on a day that is not earlier than 20 days and not later than 40 days
4 after giving public notice under (8) of this subsection, to provide the committee and
5 its staff and agents a review of the commissioner's preliminary findings and
6 determination on the royalty modification application and the supporting data; if
7 the Legislative Budget and Audit Committee accepts the commissioner's offer, the
8 committee shall give notice of the committee's meeting to all members of the
9 legislature;

10 (11) shall make copies of the preliminary findings and determination
11 available to

12 (A) the presiding officer of each house [INTEREST,
13 INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE
14 EVENT OF AN INCREASE IN THE PRICE OF OIL OR GAS. BEFORE
15 APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL
16 MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE
17 MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE
18 WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR
19 THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS]
20 of the legislature;

21 (B) the chairs of the legislature's standing committees on
22 resources; and

23 (C) the chairs of the legislature's special committees on oil
24 and gas, if any;

25 (12) shall,

26 (A) for a royalty modification that does not, under (4)(A)(i)
27 of this subsection, require legislative approval, within 30 days after the close
28 of the public comment period under (8) of this subsection,

29 (i) prepare a summary of the public response to the
30 commissioner's preliminary findings and determination;

31 (ii) make a final findings and determination; the
32 commissioner's final findings and determination prepared under this

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subparagraph regarding royalty modification is, as to the royalty modification applicant, final and not appealable to the court;

(B) for a royalty modification that, under (4)(A)(i) of this subsection, requires legislative approval, within 30 days after the close of the public comment period under (8) of this subsection,

(i) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(ii) make a proposed final findings and determination and shall submit it to the legislature or, if at the time the commissioner makes the proposed final findings and determination the legislature is not in session, shall ^{SUBMIT} subject it to the Legislative Budget and Audit Committee; if the legislature approves the commissioner's proposed final findings and determination by adoption of a joint resolution or, when the matter is referred to the Legislative Budget and Audit Committee, if the Legislative Budget and Audit Committee approves the commissioner's proposed final findings and determination by a majority vote of the full membership of the committee, the commissioner shall issue a final findings and determination; the commissioner's final findings and determination prepared under this subparagraph regarding royalty modification is, as to the royalty modification applicant, final and not appealable to the court;

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decision either.*

(C) transmit a copy of the final findings and determination prepared under (A) or (B) of this paragraph to the lessee;

(D) with the applicant's consent, amend the applicant's lease or utilization agreement consistent with the commissioner's final findings and determination; and

(E) make copies of the final findings and determination available to a person who submitted comment under (8) of this subsection and who has filed a request for the copies;

(13) is not limited by the provisions of AS 38.05.134(3) or (D) of this section in the commissioner's determination under this subsection.

1 * Sec. 2. AS 38.05.180(p) is amended to read:

2 (p) To conserve the natural resources of all or a part of an oil or gas pool, field,
3 or like area, the lessees and their representatives may unite with each other, or jointly
4 or separately with others, in collectively adopting or operating under a cooperative or a
5 unit plan of development or operation of the pool, field, or like area, or a part of it, when
6 determined and certified by the commissioner to be necessary or advisable in the public
7 interest. The commissioner may, with the consent of the holders of leases involved,
8 establish, change, or revoke drilling, producing, and royalty requirements of the leases
9 and adopt regulations with reference to the leases, with like consent on the part of the
10 lessees, in connection with the institution and operation of a cooperative or unit plan as
11 the commissioner determines necessary or proper to secure the proper protection of the
12 public interest. The commissioner may not reduce royalty on leases in connection
13 with a cooperative or unit plan except as provided in (j) of this section. The
14 commissioner may require oil and gas leases issued under this section to contain a
15 provision requiring the lessee to operate under a reasonable cooperative or unit plan, and
16 may prescribe a plan under which the lessee must operate. The plan must adequately
17 protect all parties in interest, including the state.

18 • Sec. 3. AS 38.05.180(s) is amended to read:

19 (s) When separate tracts cannot be individually developed and operated in
20 conformity with an established well-spacing or development program, a lease, or a
21 portion of a lease, may be pooled with other land, whether or not owned by the state,
22 under a communication or drilling agreement providing for an apportionment of
23 production or royalties among the separate tracts of land comprising the drilling or
24 spacing unit when determined by the commissioner to be in the public interest.
25 Operations or production under the agreement are considered as operations or production
26 as to each lease committed to the agreement. The commissioner may not reduce
27 royalty on leases in connection with a communication or drilling agreement except
28 as provided in (j) of this section.

29 • Sec. 4. AS 38.05.180(t) is amended to read:

30 (t) The commissioner may prescribe conditions and approve, on conditions,
31 drilling, or development contracts made by one or more lessees of oil or gas leases, with
32 one or more persons, when, in the discretion of the commissioner, the conservation of

1 natural resources or the public convenience or necessity requires it or the interests of the
2 state are best served. All leases operated under approved drilling or development
3 contracts and interests under them, are excepted in determining holding or control under
4 AS 38.05.140. The commissioner may not reduce royalty on a lease or leases that
5 are subject to a drilling or development contract except as provided in (j) of this
6 section.

7 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

DRAFT MARK-UP OF CSHB 207(FIN) am

April 23, 1995

Note: **Bold text** is suggested new language.

[CAP. TEXT] denotes deletion of current AS 38.05.180 (j) text.

[regular text] denotes suggested deletions of proposed amendments.

Section 1. AS 38.05.180(j) is amended to read:

(j) **The** [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE] commissioner

(1) may [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION] provide for modification of royalty on individual leases, leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05

(A) to allow for production from an oil or gas field [pool, or portion of a field or pool] if

(i) the oil or gas field [pool, or portion of the field or pool] has been [sufficiently] delineated sufficiently to [the satisfaction of] allow the commissioner to conduct the analyses and make the findings required by this subsection;

(ii) the field [pool, or portion of the field or pool] has not previously produced oil or gas for sale; and

(iii) oil or gas production from the field [pool, or portion of the field or pool] would not otherwise be economically feasible;

(B) to prolong the economic life of an oil or gas field when the field's operating costs exceed revenues, and absent a royalty modification are likely to continue to do so [pool, or portion of a field or pool as per barrel or barrel equivalent costs increase; or as the price of oil or gas decreases, and the increase or decrease is sufficient to make further production no longer feasible] ; or

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(C) to re-establish production of shut-in oil or gas that would not otherwise be economically feasible;

(2) [. THE COMMISSIONER] may not grant a [REDUCTION OF] royalty modification unless the lessee or lessees requesting the modification [change] [REDUCTION] make [MAKES] a clear and convincing showing that a modification of royalty meets the requirements of this subsection and is in the best interests of the state;

(3) shall [THE REVENUE FROM THE LESSEE'S SHARE OF ALL HYDROCARBONS PRODUCED FROM THE FIELD IS AND IS LIKELY TO CONTINUE TO BE INSUFFICIENT TO PRODUCE A REASONABLE RATE OF RETURN WITH RESPECT TO THE LESSEE'S TOTAL INVESTMENT IN THE FIELD. THE COMMISSIONER MAY] condition any [A] royalty modification [REDUCTION] granted under this subsection in any way necessary to protect the state's best interests; the commissioner shall provide for subsequent modification to restore or increase the state's royalty share if the presumptions upon which the modification is based, including but not limited to projected production rate or volume, predicted ultimate recovery, or development and operating costs are subsequently determined to have been in error, and as a consequence to have underestimated the economic feasibility of the field's development absent a royalty modification [an increase or decrease or other modification of the state's royalty share by a sliding scale royalty or other mechanism that shall be based upon a change [INTEREST, INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN THE EVENT OF AN INCREASE] in the price of oil or gas and may also be based on other relevant factors such as a change in production rate, projected ultimate recovery, development costs and operating costs] ;

(4) may not grant a royalty reduction for a field [pool, or portion of a field or pool]

(A) under (1)(A) of this subsection, if the anticipated aggregate value of the proposed reduction exceeds five million dollars without prior approval of the legislature; or that exceeds 50 [75] percent of the royalty originally specified in a lease entered into under the provisions of (f) of the section or AS 38.05.134;

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(B) under (1)(B) or (1)(C) of this subsection that would reduce the royalty rate below a nominal 5 percent [exceeds 90 percent of the royalty originally specified in a lease entered into under the provisions of (f) of this section or AS 38.05.134] ; or

(C) under either (1)(A), (1)(B) or (1)(C) of this subsection without an explicit condition that the royalty modification is not assignable;

(5) shall require the lessee or lessees to submit, with the application for the royalty reduction, financial and technical data that demonstrate[s] that the requirements of this subsection are met; the commissioner

(A) shall [may] require disclosure of [only] the financial and technical data relating to development, production, transportation and marketing of oil and gas from the field that, in the commissioner's sole discretion, are deemed necessary to support a determination of whether or not to grant the request for royalty modification [that is reasonably available to the applicant] , and

* (B) shall, with the exception of disclosure to the Legislative Budget and Audit Committee and its staff or agents, keep the data confidential under AS 38.05.035(a)(9) upon the lessee's request;

(6) may require the lessee or lessees making application for the royalty modification [reduction] to [retain and] pay for the services of a ^{Q17}Independent contractor, selected by the commissioner [lessee or lessees from a list of qualified consultants in hydrocarbon production and economics provided by the commissioner] , that is qualified to evaluate hydrocarbon development, production, transportation and marketing economics, to assist the commissioner in evaluating

the application and financial and technical data [when the commissioner requires the lessee or lessees to retain the services of a contractor, the commissioner shall determine the relevant scope of the work to be performed by the contractor] ;

(7) shall make and publish a preliminary findings and determination on the royalty modification [reduction] application, give reasonable public notice of the preliminary findings and determination, and invite public comment on [to] the preliminary findings and determination during a 120-day [30-day] period for receipt of public comment;

(8) shall offer to appear before the Legislative Budget and Audit Committee, in executive session or otherwise as determined by the committee to be appropriate, on a day that is not earlier than 30 [10] days and not later than 60 [20] days after giving public notice under (7) of this subsection, to provide the committee, its staff and agents, a review of the commissioner's preliminary findings and determination on the royalty modification [reduction] application and the supporting data [administrative process] ; if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to all members of the legislature [of the committee's meeting] ;

(9) shall make copies of the preliminary findings and determination available to

(A) the presiding officer of each house [. BEFORE APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS] [of the legislature] ;

(B) the chairs of the legislature's standing committees on resources ; and

(C) the chairs of the legislature's special committees on oil and gas, if any;

(10) shall, for a royalty modification not requiring legislative approval as specified in (j)(4)(a) of this subsection within 30 days after the close of the public comment period under (7) of this subsection.

→ (A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

→ (B) make a final findings and determination;

(11) shall, for a proposed royalty ^{modification?} reduction requiring legislative approval under (j)(4)(a) of this subsection, within 30 days after close of the public comment period.

(A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(B) make a proposed final findings and determination, and submit it to the legislature for its consideration; upon legislative approval, the commissioner may issue the final findings and determination; the commissioner's final findings and determination prepared under paragraph (10) or (11) regarding royalty modification [reduction]

(i) is, as to the applicant, final and not appealable to the superior court;

(ii) may be appealed to the superior court by a person who submitted written comment under (7) of this section, but the appeal is limited to a determination that the commissioner's decision is constitutional and was not arbitrary, capricious or confiscatory [is final and not appealable to the court];

(C) transmit a copy of the final findings and determination to the lessee or lessees;

(D) with the applicant's consent, amend the applicant's lease or unitization agreement consistent with the commissioner's final decision, and:

(E) make copies of the final findings and determination available to all [a] persons who submitted comment under (7) of this subsection and who filed a request for the copies:

(12) [] is not limited by the provisions of AS 38.05.134(3) or (f) of this section in the commissioner's determination under this subsection.

END OF CHANGES

**Sections 2-5 to remain as they appear in CS FOR HOUSE BILL NO.
207(FIN) am**

DRAFT MARK-UP OF CSHB 207(FIN) am

April 23, 1995

Note: **Bold text** is suggested new language.

[CAP. TEXT] denotes deletion of current AS 38.05.180 (j) text.

[regular text] denotes suggested deletions of proposed amendments.

Section 1. AS 38.05.180(j) is amended to read:

(j) **The [TO PROLONG THE ECONOMIC LIFE OF AN OIL AND GAS FIELD OR TO REESTABLISH COMMERCIAL PRODUCTION OF SHUT-IN OIL OR GAS THAT WOULD NOT OTHERWISE BE ECONOMICALLY FEASIBLE, THE]**
commissioner

(1) may [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION] provide for modification of royalty on individual leases, leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05

(A) to allow for production from an oil or gas field [pool, or portion of a field or pool] if

(i) the oil or gas field [pool, or portion of the field or pool] has been [sufficiently] delineated sufficiently to [the satisfaction of] allow the commissioner to conduct the analyses and make the findings required by this subsection;

(ii) the field [pool, or portion of the field or pool] has not previously produced oil or gas for sale; and

(iii) oil or gas production from the field [pool, or portion of the field or pool] would not otherwise be economically feasible;

(4) may not grant a royalty reduction for a field, pool, or portion of a field or pool

(A) under (1)(A) of this subsection, if the anticipated aggregate value of the proposed reduction exceeds five million dollars without prior approval of the legislature; or that exceeds 50 [75] percent of the royalty originally specified in a lease entered into under the provisions of (f) of the section or AS 38.05.134;

(B) under (1)(B) or (1)(C) of this subsection that would reduce the royalty rate below a nominal 5 percent [exceeds 90 percent of the royalty originally specified in a lease entered into under the provisions of (f) of this section or AS 38.05.134] ; or

(C) under either (1)(A), (1)(B) or (1)(C) of this subsection without an explicit condition that the royalty modification is not assignable;

(5) shall require the lessee or lessees to submit, with the application for the royalty reduction, financial and technical data that demonstrate [s] that the requirements of this subsection are met; the commissioner

(A) shall [may] require disclosure of [only] the financial and technical data relating to development, production, transportation and marketing of oil and gas from the field that, in the commissioner's sole discretion, are deemed necessary to support a determination of whether or not to grant the request for royalty modification [that is reasonably available to the applicant] , and

(B) shall, with the exception of disclosure to the Legislative Budget and Audit Committee and its staff or agents, keep the data confidential under AS 38.05.035(a)(9) upon the lessee's request;

(6) may require the lessee or lessees making application for the royalty modification [reduction] to [retain and] pay for the services of a independent contractor, selected by the commissioner [lessee or lessees from a list of qualified consultants in hydrocarbon production and economics provided by the commissioner] , that is qualified to evaluate hydrocarbon development, production, transportation and marketing economics, to assist the commissioner in evaluating

the application and financial and technical data | when the commissioner requires the lessee or lessees to retain the services of a contractor, the commissioner shall determine the relevant scope of the work to be performed by the contractor |;

(7) shall make and publish a preliminary findings and determination on the royalty modification | reduction | application, give reasonable public notice of the preliminary findings and determination, and invite public comment on | to | the preliminary findings and determination during a ~~120-day~~ | 30-day | period for receipt of public comment;

60 days

60-

(8) shall address in findings and determinations required under paragraphs (7), (10) and (11) of this subsection

(A) the revenue needs and projected fiscal condition of the state during the period of the proposed modification;

(B) the projected impacts of the proposed modification on the state's revenue needs;

(C) the likelihood that the proposed modification will result in incremental capital investment, and/or other beneficial spending within the state, and the steps taken by the commissioner in conditioning the modification to assure that anticipated investments and/or other projected state benefits occur;

(D) the projected social impacts of the proposed modification, including its effects on the employment of Alaskans and the use of in-state contractors and suppliers;

(E) the projected effects of the proposed modification upon existing and potential new commercial enterprise, competition and patterns of investments within the state;

(F) alternatives to the proposed modification; and

(G) any other matter considered relevant to the findings and determinations;

(9) [8] shall offer to appear before the Legislative Budget and Audit Committee, in executive session or otherwise as determined by the committee to be appropriate, on a day that is not earlier than ³⁰~~30~~ [10] days and not later than ⁴⁰~~60~~ [20] days after giving public notice under (7) of this subsection, to provide the committee, its staff and agents, a review of the commissioner's preliminary findings and determination on the royalty modification [reduction] application and the supporting data [administrative process]; if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to all members of the legislature [of the committee's meeting];

(10) [9] shall make copies of the preliminary findings and determination available to

(A) the presiding officer of each house [. BEFORE APPROVING A ROYALTY REDUCTION, THE COMMISSIONER SHALL MAKE A WRITTEN FINDING THAT THE STATE HAS OBTAINED THE MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS COMPATIBLE WITH ALLOWING A REASONABLE RATE OF ECONOMIC RETURN FOR THE LESSEE, AND SEND COPIES OF THE FINDING TO ALL MEMBERS] [of the legislature];

(B) the chairs of the legislature's standing committees on resources ; and

(C) the chairs of the legislature's special committees on oil and gas, if any;

(11) [10] shall, for a royalty modification not requiring legislative approval as specified in (j)(4)(a) of this subsection within 30 days after the close of the public comment period under (7) of this subsection.

(A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(B) make a final findings and determination;

(12) shall, for a proposed royalty reduction requiring legislative approval under (i)(4)(a) of this subsection, within 30 days after close of the public comment period,

(A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(B) make a proposed final findings and determination, and submit it to the legislature for its consideration; upon legislative approval, the commissioner may issue the final findings and determination; the commissioner's final findings and determination prepared under paragraph (10) or (11) regarding royalty modification [reduction]

(i) is, as to the applicant, final and not appealable to the superior court;

(ii) may be appealed to the superior court by a person who submitted written comment under (7) of this section, but the appeal is limited to a determination that the commissioner's decision is constitutional and was not arbitrary, capricious or confiscatory [is final and not appealable to the court];

(C) transmit a copy of the final findings and determination to the lessee or lessees;

(D) with the applicant's consent, amend the applicant's lease or unitization agreement consistent with the commissioner's final decision, and;

(E) make copies of the final findings and determination available to ~~any~~ a person who submitted comment under (7) of this subsection and who filed a request for the copies;

Clarify this → (13) (11) is not limited by the provisions of AS 38.05.134(3) or (f) of this section in the commissioner's determination under this subsection.

Sections 2-5 to remain as they appear in CS FOR HOUSE BILL NO.
207(FIN) am

Add new sections 6 and 7 as follows:

Sec. 6 The provisions of AS 38.05.180(j)(1)(A) are repealed January 31, 1998.

Sec. 7 Any modification of royalty granted under the provisions of AS 38.05.180(j)(1)(A) is rescinded on December 31, 1999, at which time the royalty rate effective prior to modification is re-established.

J.E.
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