



# LAWS OF ALASKA

1993

**Source**

CSHB 116(FIN)(title am)

**Chapter No.**

53

**AN ACT**

Amending the manner of determining the royalty received by the state on gas production, and directing the commissioner of natural resources to accept, under certain circumstances, the contract price agreed to between a lessee of federal land and a gas or electric utility as the value of the federal government's royalty share from natural gas production on federal land from which the state is entitled under applicable federal law to receive a share of the royalty on gas production; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

**Permitted to become law without signature**

**Actual Effective Date:** June 12, 1993; section 4 is retroactive to January 3, 1959

AN ACT

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

7 \_\_\_\_\_  
8 \* **Section 1.** AS 38.05.180(aa) is amended to read:  
9 (aa) Within 90 days after the written request of a lessee of a lease issued under  
10 this section or of a lessee of federal land from which the state is entitled under  
11 applicable federal law to receive a share of the royalty on gas production, the  
12 commissioner shall enter into an agreement with the lessee to use or accept the price

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1 for the gas established in the contract between the lessee and a gas or electric utility  
2 as the value of the state's royalty share of gas production sold by the lessee under the  
3 contract

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (1) but only if the primary function of the utility with which the lessee has  
30 entered into the contract is to provide, either directly or by selling at wholesale to another  
31 utility, gas or electricity to the general public, including residential consumers, within the

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1 utilities' service areas, and the utility with which the lessee has entered into the contract is not  
2 an affiliated interest, as that term is defined in AS 42.05.990, with the lessee or with a  
3 subsequent purchaser of more than 10 percent of the utility's gas or electricity; and

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

6 (A) the contract price is unreasonably low;

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

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

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

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

18 (d) In this section,

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

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

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

30 \* **Sec. 5. RETROSPECTIVE EFFECT OF SECTION 4.** Section 4 of this Act is  
31 retroactive to January 3, 1959, and applies to the federal government's royalty share from

1 natural gas production due the state after January 2, 1959.

2 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).