



LAWS OF ALASKA

1995

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Chapter No.

85

AN ACT

Relating to adjustments to royalty reserved to the state to encourage otherwise uneconomic production of oil and gas; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 19, 1995

Actual Effective Date: June 20, 1995

AN ACT

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2 Relating to adjustments to royalty reserved to the state to encourage otherwise uneconomic
3 production of oil and gas; and providing for an effective date.

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

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

13 * Sec. 2. AS 38.05.180(j) is amended to read:

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

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

3 (1) may provide for an increase or decrease or otherwise modify
4 [SHALL ADOPT REGULATIONS TO ALLOW REDUCTION OF] royalty, to allow
5 for production that would not otherwise be economically feasible, on individual
6 leases, leases unitized as described in (p) of this section, leases subject to an
7 agreement described in (s) or (t) of this section, or interests unitized under
8 AS 31.05; the commissioner may act under this subsection to modify the royalty

9 (A) after the effective date of this Act and not later than
10 July 1, 2015, so long as the authority to modify royalty under this
11 subparagraph has been authorized or reauthorized by law within the 10
12 years preceding the commissioner's action to modify the royalty, to allow
13 for production from an oil or gas field or pool if

14 (i) the oil or gas field or pool has been delineated
15 sufficiently to allow the commissioner to conduct the analyses and
16 make the findings required by this subsection; and

17 (ii) the field or pool has not previously produced oil
18 or gas for sale;

19 (B) to prolong the economic life of an oil or gas field or pool
20 as costs per barrel or barrel equivalent increase; or

21 (C) to reestablish production of shut-in oil or gas;

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

27 (3) shall

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

1 INVESTMENT IN THE FIELD. THE COMMISSIONER MAY] condition
2 any [A] royalty **modification** [REDUCTION] granted under this subsection in
3 any way necessary to protect the state's **best interests**;

4 (B) describe, in the findings and determinations required by
5 this subsection, the relevant factors, including price, projected production
6 rate or volume, predicted ultimate recovery, and development, operating,
7 and transportation costs, upon which the modification is based;

8 (C) for a modification under (1)(A) of this subsection, set out
9 the terms and conditions, which

10 (i) must include a mechanism for adjusting royalty
11 percentage based on price; using forecasts of the range of future
12 prices and their probabilities, the mechanism must provide that the
13 value of the potential revenue increases resulting from royalty
14 percentage increases must exceed the value of the potential revenue
15 losses resulting from royalty percentage decreases; and

16 (ii) may include, in addition to the royalty percentage
17 adjustment based on price, which must meet the conditions
18 specified in (i) of this subparagraph, a further adjustment based on
19 production rate or volume from the field or pool; and

20 (D) for a modification under (1)(B) or (1)(C) of this
21 subsection, set out the terms and conditions, which may include
22 substitution of a sliding scale royalty or other mechanism to modify the
23 royalty if there is a change in the relevant factors, such as price, projected
24 production rate or volume, predicted ultimate recovery, and development,
25 operating, and transportation costs, upon which the modification is based;

26 (4) may not grant a royalty modification for a field or pool

27 (A) under (1)(A) of this subsection if the royalty
28 modification for the field or pool would establish a royalty rate of less than
29 five percent in amount or value of the production removed or sold from
30 a lease or leases covering the field or pool;

31 (B) under (1)(B) or (1)(C) of this subsection if the royalty

1 modification for the field or pool would establish a royalty rate of less than
2 three percent in amount or value of the production removed or sold from
3 a lease or leases covering the field or pool;

4 (5) may not grant a royalty modification under this subsection
5 without including an explicit condition that the royalty modification is not
6 assignable without the prior written approval of the commissioner; the
7 commissioner shall, in the preliminary and final findings and determinations, set
8 out the conditions under which the royalty modification may be assigned;

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

12 (A) require disclosure of the financial and technical data
13 related to development, production, and transportation of oil and gas from
14 the field or pool that are necessary to make a determination as to whether
15 or not to grant the request for royalty modification; and

16 (B) keep the data described in (A) of this paragraph
17 confidential under AS 38.05.035(a)(9) at the request of the lessee or lessees
18 making application for the royalty modification; the confidential data may
19 be disclosed by the commissioner to legislators and to the legislative
20 auditor and as directed by the chair or vice-chair of the Legislative Budget
21 and Audit Committee to the director of the division of legislative finance,
22 the permanent employees of their respective divisions who are responsible
23 for evaluating a royalty modification, and to agents or contractors of the
24 legislative auditor or the legislative finance director who are engaged
25 under contract to evaluate the royalty modification, provided they sign an
26 appropriate confidentiality agreement;

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

1 independent contractor under this paragraph is not subject to AS 36.30;

2 (8) shall

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

10 (B) for a royalty modification under (1)(A) of this
11 subsection, if the governor approves the preliminary findings and
12 determination under (A) of this paragraph,

13 (i) give reasonable public notice of the preliminary
14 findings and determination;

15 (ii) concurrently with the issuance of the public
16 notice, unless directed by the Legislative Budget and Audit
17 Committee to do otherwise, make available copies of the
18 commissioner's preliminary findings and determination on the
19 royalty modification application and the supporting financial and
20 technical data, including the work papers, analyses, and
21 recommendations of any contractors retained under (7) of this
22 subsection, to persons authorized under (6)(B) of this subsection to
23 review the data; and

24 (iii) invite public comment on the preliminary
25 findings and determination during a 30-day period for receipt of
26 public comment;

27 (C) for a royalty modification under (1)(B) or (C) of this
28 subsection, if the preliminary findings and determination approves a
29 royalty modification,

30 (i) give reasonable public notice of the preliminary
31 findings and determination; and

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

4 (9) shall address in any findings and determinations required under
5 this subsection the reasonably foreseeable effects of the proposed royalty
6 modification on the state's revenue;

7 (10) shall offer to appear before the Legislative Budget and Audit
8 Committee to provide the committee a review of the commissioner's preliminary
9 findings and determination on the royalty modification application and the
10 supporting financial and technical data; if the Legislative Budget and Audit
11 Committee accepts the commissioner's offer, the committee shall give notice of the
12 committee's meeting to all members of the legislature; if, under (6)(B) of this
13 subsection, the financial and technical data must be kept confidential at the
14 request of a lessee or lessees making application for the royalty modification, the
15 commissioner may appear before the committee in executive session;

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

18 (A) the presiding officer of each house [INTEREST,
19 INCLUDING RESTORATION OF THE STATE'S ROYALTY SHARE IN
20 THE EVENT OF AN INCREASE IN THE PRICE OF OIL OR GAS.
21 BEFORE APPROVING A ROYALTY REDUCTION, THE COMMISSIONER
22 SHALL MAKE A WRITTEN FINDING THAT THE STATE HAS
23 OBTAINED THE MAXIMUM POSSIBLE ECONOMIC RETURN THAT IS
24 COMPATIBLE WITH ALLOWING A REASONABLE RATE OF
25 ECONOMIC RETURN FOR THE LESSEE, AND SEND COPIES OF THE
26 FINDING TO ALL MEMBERS] 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, within 30 days after the close of the public comment

1 period under (8) of this subsection,

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

4 (B) make a final findings and determination and present it
5 to the governor for the governor's approval or disapproval; the governor
6 may not delegate a decision to approve or disapprove a final findings and
7 determination presented under this subparagraph; the commissioner's final
8 findings and determination regarding a royalty modification, if approved
9 by the governor, is final and not appealable to the court;

10 (C) transmit a copy of the final findings and determination
11 prepared under (B) of this paragraph to the lessee or lessees making
12 application for the royalty modification;

13 (D) with the consent of the lessee or lessees applying for the
14 royalty modification, amend the lease or unitization agreement of the lessee
15 or lessees applying for the royalty modification consistent with the
16 commissioner's approved final findings and determination; and

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

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

22 * Sec. 3. AS 38.05.180(p) is amended to read:

23 (p) To conserve the natural resources of all or a part of an oil or gas pool,
24 field, or like area, the lessees and their representatives may unite with each other, or
25 jointly or separately with others, in collectively adopting or operating under a
26 cooperative or a unit plan of development or operation of the pool, field, or like area,
27 or a part of it, when determined and certified by the commissioner to be necessary or
28 advisable in the public interest. The commissioner may, with the consent of the
29 holders of leases involved, establish, change, or revoke drilling, producing, and royalty
30 requirements of the leases and adopt regulations with reference to the leases, with like
31 consent on the part of the lessees, in connection with the institution and operation of

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1 a cooperative or unit plan as the commissioner determines necessary or proper to
2 secure the proper protection of the public interest. The commissioner may not
3 decrease royalty on leases in connection with a cooperative or unit plan except as
4 provided in (j) of this section. The commissioner may require oil and gas leases
5 issued under this section to contain a provision requiring the lessee to operate under
6 a reasonable cooperative or unit plan, and may prescribe a plan under which the lessee
7 must operate. The plan must adequately protect all parties in interest, including the
8 state.

9 * Sec. 4. AS 38.05.180(s) is amended to read:

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

20 * Sec. 5. AS 38.05.180(t) is amended to read:

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

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