

CS FOR HOUSE BILL NO. 81(RES) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Amended: 5/14/21

Offered: 3/24/21

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the modification of a royalty or net profit share in an oil and gas or**
2 **gas only lease."**

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

4 *** Section 1.** AS 36.30.850(b)(32) is amended to read:

5 (32) **a contract** [CONTRACTS] between the Department of Natural
6 Resources and **a contractor** [CONTRACTORS] qualified to evaluate hydrocarbon
7 development, production, transportation, and economics, to assist the commissioner of
8 natural resources in evaluating applications for **a** royalty **or net profit share**
9 **modification under AS 38.05.180(j)** [INCREASES OR DECREASES OR OTHER
10 ROYALTY ADJUSTMENTS,] and evaluating the related financial and technical data
11 [, ENTERED INTO UNDER AS 38.05.180(j)];

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

13 (j) The commissioner

14 (1) may provide for modification of **a** royalty **or net profit share** on

1 individual leases, leases unitized as described in (p) of this section, leases subject to an
 2 agreement described in (s) or (t) of this section, or interests unitized under AS 31.05

3 (A) to allow for production from an oil or gas field or pool if

4 (i) the oil or gas field or pool has been sufficiently
 5 delineated to the satisfaction of the commissioner;

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

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

10 (B) to prolong the economic life of an oil or gas field or pool as
 11 per barrel or barrel equivalent costs increase or as the price of oil or gas
 12 decreases, and the increase or decrease is sufficient to make future production
 13 no longer economically feasible; [OR]

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

16 **(D) to prolong the economic life of an oil or gas field or pool**
 17 **from which, without additional capital expenditures, future production**
 18 **would no longer be economically feasible; a royalty modification may not**
 19 **be made under this subparagraph;**

20 (2) may not grant a royalty **or net profit share** modification unless the
 21 lessee or lessees requesting the change make a clear and convincing showing that [A]
 22 modification of **the** royalty **or net profit share** meets the requirements of this
 23 subsection and is in the best interests of the state;

24 (3) shall provide for an increase or decrease or other modification of
 25 the state's royalty **or net profit** share by a **fixed royalty**, sliding scale royalty, **net**
 26 **profit share adjustment**, or other mechanism [THAT SHALL BE] based on a change
 27 in the price of oil or gas **or** [AND MAY ALSO BE BASED] on other relevant factors,
 28 **including** [SUCH AS] a change in production rate, projected ultimate recovery,
 29 development costs, and operating costs;

30 (4) may not grant a royalty reduction for a field or pool

31 (A) under (1)(A) of this subsection if the royalty modification

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

4 (B) under (1)(B) or (1)(C) of this subsection if the royalty
 5 modification for the field or pool would establish a royalty rate of less than
 6 three percent in amount or value of the production removed or sold from a
 7 lease or leases covering the field or pool;

8 **(5) may not grant a net profit share modification for a field or pool**
 9 **under (1) of this subsection that would reduce a share reserved to the state to less**
 10 **than 10 percent of the net profit derived from the lease;**

11 **(6) may not grant a net profit share modification for a field or pool**
 12 **under (1)(D) of this subsection unless**

13 **(A) the modification requires the lessee or lessees to make**
 14 **the capital expenditures necessary for production to be economically**
 15 **feasible; and**

16 **(B) the commissioner determines that the capital**
 17 **expenditures made under (A) of this paragraph are sufficient to maximize**
 18 **production from the field or pool;**

19 **(7) [(5)] may not grant a royalty or net profit share reduction under**
 20 **this subsection without including an explicit condition that the royalty or net profit**
 21 **share reduction is not assignable without the prior written approval, which may not be**
 22 **unreasonably withheld, by the commissioner; the commissioner shall, in the**
 23 **preliminary and final findings and determinations, set out the conditions under which**
 24 **the royalty or net profit share reduction may be assigned;**

25 **(8) [(6)] shall require the lessee or lessees to submit, with the**
 26 **application for the royalty or net profit share reduction, financial and technical data**
 27 **that demonstrate that the requirements of this subsection are met; the commissioner**

28 (A) may require disclosure of only the financial and technical
 29 data related to development, production, and transportation of oil and gas or
 30 gas only from the field or pool that are reasonably available to the applicant;
 31 and

1 (B) shall keep the data confidential under AS 38.05.035(a)(8)
 2 at the request of the lessee or lessees making application for the royalty **or net**
 3 **profit share** reduction; the confidential data may be disclosed by the
 4 commissioner to legislators and to the legislative auditor and as directed by the
 5 chair or vice-chair of the Legislative Budget and Audit Committee to the
 6 director of the division of legislative finance, the permanent employees of their
 7 respective divisions who are responsible for evaluating a royalty **or net profit**
 8 **share** reduction, and to agents or contractors of the legislative auditor or the
 9 legislative finance director who are engaged under contract to evaluate the
 10 royalty **or net profit share** reduction, if they sign an appropriate
 11 confidentiality agreement;

12 **(9)** [(7)] may

13 (A) require the lessee or lessees making application for the
 14 royalty reduction under (1)(A) **of this subsection or a net profit share**
 15 **reduction under (1)(A) or (1)(D)** of this subsection to pay for the services of
 16 an independent contractor, selected by the lessee or lessees from a list of
 17 qualified consultants compiled by the commissioner, to evaluate hydrocarbon
 18 development, production, transportation, and economics and to assist the
 19 commissioner in evaluating the application and financial and technical data; if,
 20 under this subparagraph, the commissioner requires payment for the services of
 21 an independent contractor, the total cost of the services to be paid for by the
 22 lessee or lessees may not exceed \$150,000 for each application, and the
 23 commissioner shall determine the relevant scope of the work to be performed
 24 by the contractor; selection of an independent contractor under this
 25 subparagraph is not subject to AS 36.30;

26 (B) with the mutual consent of the lessee or lessees making
 27 application for the royalty **or net profit share** reduction under (1)(B) or (1)(C)
 28 of this subsection, request payment for the services of an independent
 29 contractor, selected from a list of qualified consultants to evaluate hydrocarbon
 30 development, production, transportation, and economics by the commissioner
 31 to assist the commissioner in evaluating the application and financial and

1 technical data; if, under this subparagraph, the commissioner requires payment
 2 for the services of an independent contractor, the total cost of the services that
 3 may be paid for by the lessee or lessees may not exceed \$150,000 for each
 4 application, and the commissioner shall determine the relevant scope of the
 5 work to be performed by the contractor; selection of an independent contractor
 6 under this subparagraph is not subject to AS 36.30;

7 **(10)** [(8)] shall make and publish a preliminary findings and
 8 determination on the royalty **or net profit share** reduction application, give
 9 reasonable public notice of the preliminary findings and determination, and invite
 10 public comment on the preliminary findings and determination during a 30-day period
 11 for receipt of public comment;

12 **(11)** [(9)] shall offer to appear before the Legislative Budget and Audit
 13 Committee, on a day that is not earlier than 10 days and not later than 20 days after
 14 giving public notice under **(9)** [(8)] of this subsection, to provide the committee a
 15 review of the commissioner's preliminary findings and determination on the royalty **or**
 16 **net profit share** reduction application and administrative process; if the Legislative
 17 Budget and Audit Committee accepts the commissioner's offer, the committee shall
 18 give notice of the committee's meeting to all members of the legislature;

19 **(12)** [(10)] shall make copies of the preliminary findings and
 20 determination available to

- 21 (A) the presiding officer of each house 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 and
 25 gas, if any;

26 **(13)** [(11)] shall, within 30 days after the close of the public comment
 27 period under **(9)** [(8)] of this subsection,

- 28 (A) prepare a summary of the public response to the
 29 commissioner's preliminary findings and determination;
- 30 (B) make a final findings and determination; the
 31 commissioner's final findings and determination prepared under this

1 subparagraph regarding a royalty **or net profit share** reduction is final and not
2 appealable to the court;

3 (C) transmit a copy of the final findings and determination to
4 the lessee;

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

7 (E) make copies of the final findings and determination
8 available to each person who submitted comment under **(9)** [(8)] of this
9 subsection and who has filed a request for the copies;

10 **(14)** [(12)] is not limited by the provisions of AS 38.05.134(3) or (f) of
11 this section in the commissioner's determination under this subsection.

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

13 (p) To conserve the natural resources of all or a part of an oil or gas pool,
14 field, or like area, the lessees and their representatives may unite with each other, or
15 jointly or separately with others, in collectively adopting or operating under a
16 cooperative or a unit plan of development or operation of the pool, field, or like area,
17 or a part of it, when determined and certified by the commissioner to be necessary or
18 advisable in the public interest. The commissioner may, with the consent of the
19 holders of leases involved, establish, change, or revoke drilling, producing, and
20 royalty requirements of the leases and adopt regulations with reference to the leases,
21 with like consent on the part of the lessees, in connection with the institution and
22 operation of a cooperative or unit plan as the commissioner determines necessary or
23 proper to secure the proper protection of the public interest. The commissioner may
24 not reduce **the** royalty **or net profit share** on **a lease** [LEASES] in connection with a
25 cooperative or unit plan except as provided in (j) of this section. The commissioner
26 may require a lease issued under this section to contain a provision requiring the lessee
27 to operate under a reasonable cooperative or unit plan, and may prescribe a plan under
28 which the lessee must operate. The plan must adequately protect all parties in interest,
29 including the state.

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

31 (s) When separate tracts cannot be individually developed and operated in

1 conformity with an established well-spacing or development program, a lease, or a
 2 portion of a lease, may be pooled with other land, whether or not owned by the state,
 3 under a communitization or drilling agreement providing for an apportionment of
 4 production or royalties among the separate tracts of land comprising the drilling or
 5 spacing unit when determined by the commissioner to be in the public interest.
 6 Operations or production under the agreement are considered as operations or
 7 production as to each lease committed to the agreement. The commissioner may not
 8 reduce **the** royalty **or net profit share** on **a lease** [LEASES] in connection with a
 9 communitization or drilling agreement except as provided in (j) of this section.

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

11 (t) The commissioner may prescribe conditions and approve, on conditions, **a**
 12 drilling [,] or development **contract** [CONTRACTS] made by one or more lessees of
 13 oil or gas leases, with one or more persons, when, in the discretion of the
 14 commissioner, the conservation of natural resources or the public convenience or
 15 necessity requires it or the interests of the state are best served. **A lease** [ALL
 16 LEASES] operated under **an** approved drilling or development **contract**,
 17 [CONTRACTS] and interests under **the contract** [THEM], are excepted in
 18 determining holding or control under AS 38.05.140. The commissioner may not
 19 reduce **the** royalty **or net profit share** on a lease [OR LEASES] that **is** [ARE] subject
 20 to a drilling or development contract except as provided in (j) of this section.

21 * **Sec. 6.** AS 38.05.180 is amended by adding a new subsection to read:

22 (mm) The commissioner may grant a royalty or net profit share modification
 23 under (j) of this section only if the Alaska Royalty Oil and Gas Development Advisory
 24 Board recommends that the commissioner approve the royalty or net profit share
 25 modification.

26 * **Sec. 7.** AS 38.06.040(a) is amended to read:

27 (a) The board shall

28 (1) in accordance with the criteria set out in AS 38.06.070, develop a
 29 plan for the wise development of the state's oil and gas royalty interests; the plan of
 30 development shall be consistent with

31 (A) growth of the private sector of the economy;

- 1 (B) environmental standards required by law; and
2 (C) public fiscal stability;
- 3 (2) hold public hearings on proposed sales, exchanges, or other
4 disposals of royalty oil or gas to determine whether the proposals comply with
5 AS 38.06.070;
- 6 (3) examine proposed sales, exchanges, or other disposal of, and
7 recommend to the legislature that it approve or disapprove a proposed sale, exchange,
8 or other disposal of
- 9 (A) the oil or gas that is obtained by the state as royalty under
10 AS 38.05.182; or
- 11 (B) the rights to receive future oil or gas production under state
12 leases; [AND]
- 13 (4) recommend to the commissioner of natural resources the conditions
14 relating to the sale, delivery, transportation, refining, or processing of oil or gas **that**
15 [WHICH] the commissioner may include in the offer and sale of oil or gas obtained by
16 the state as royalty under AS 38.05.182; **and**
- 17 **(5) review a royalty or net profit share modification under**
18 **AS 38.05.180 and recommend that the commissioner approve or disapprove the**
19 **modification.**