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Senate Engrossed

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Jane Dee Hull
Secretary of State

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CHAPTER 25

SENATE BILL 1144

AN ACT

AMENDING SECTION 27-234, ARIZONA REVISED STATUTES; RELATING TO STATE LAND MINERAL LEASES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 27-234, Arizona Revised Statutes, is amended to read:

27-234. Rent; royalty; appeal; interest; penalty; lien

A. Before issuing a mineral lease the state land commissioner shall establish the annual land rental for the mineral lease. The rental shall be based on an appraisal that considers only nonmining uses of comparable land. The annual rental:

1. Shall not be less than seventy-five cents per acre.

2. Is payable in advance of executing the mineral lease agreement by the commissioner and at the beginning of each annual period thereafter.

B. In addition to the annual land rental payment, a royalty fee is imposed of at least two per cent based on the gross value of all of the recovered minerals or mineral products. The royalty rate for each mineral lease shall be the appraised true value of the leasehold interests of this state, established according to the appraisal standard prescribed by subsection C of this section and expressed as a percentage of the gross value. The gross value shall be based on the monthly average published unit price for minerals and mineral products as cited in commercial commodities or trading indexes or trading journals as determined by the commissioner and specified in the lease. If a mineral product does not have a published

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price, the gross value shall be established by reference to the total amount paid at the first point of sale or the value at the point of use.

C. The commissioner shall appraise the right to extract minerals from the trust land before issuing a mineral lease in order to determine whether a royalty rate greater than the minimum rate established by statute is justified to obtain a fair value for the mineral ores or products. At the end of the first year of commercial production, the commissioner shall reappraise the royalty rate to determine if there should be an adjustment, but in no case may the royalty rate be set below the minimum prescribed by subsection B of this section. Royalty rate appraisals shall be conducted according to standard appraisal methodology to establish the value of the leasehold interest of this state based, to the extent feasible, on comparable royalty rates for comparable mineral leases. The royalty rate shall be reappraised at the time a mineral lease is renewed and may be reappraised during the term of the lease if changes in mineral recovery technology or the discovery of new minerals substantially changes the value of the state leasehold interest.

D. For mines existing on state lands on June 8, 1989, the royalty paid under this section shall not be less than the royalty which would have been paid under statutes in effect immediately before June 8, 1989.

E. The costs of all appraisals conducted under this section shall be assessed against the lessee and added to the amount due as rental under this section.

F. The department shall review all state and county property tax assessment information relevant to the mineral lease. The department shall maintain that information on a confidential basis as prescribed by section 42-108.

G. Every mineral lease of state land shall require the lessee to make the following records available on an annual basis:

1. Itemized statements of mineral production.

2. Relevant tax records.

3. Additional relevant records pertinent to appraisal, compliance with the lease and mineral production deemed necessary by the commissioner.

H. The information obtained under subsection G, paragraph 2 of this section and any trade secrets~~, as defined in section 23-401,~~ are confidential. FOR PURPOSES OF THIS SUBSECTION, "TRADE SECRETS" ARE INFORMATION TO WHICH ALL OF THE FOLLOWING APPLY:

1. A PERSON HAS TAKEN REASONABLE MEASURES TO PROTECT THE INFORMATION FROM DISCLOSURE AND THE PERSON INTENDS TO CONTINUE TO TAKE THOSE MEASURES.

2. THE INFORMATION IS NOT AND HAS NOT BEEN REASONABLY OBTAINABLE BY LEGITIMATE MEANS BY OTHER PERSONS WITHOUT THE PERSON'S CONSENT, OTHER THAN BY GOVERNMENTAL ENTITIES AND OTHER THAN IN DISCOVERY BASED ON A SHOWING OF SPECIAL NEED IN A JUDICIAL OR QUASI-JUDICIAL PROCEEDING.

3. A STATUTE DOES NOT SPECIFICALLY REQUIRE DISCLOSURE OF THE INFORMATION TO THE PUBLIC.

4. THE PERSON HAS SATISFACTORILY SHOWN THAT DISCLOSURE OF THE INFORMATION IS LIKELY TO CAUSE SUBSTANTIAL HARM TO THE PERSON'S COMPETITIVE POSITION.

I. Mineral lessees shall make monthly royalty payments based on the mineral production activity of the previous month.

J. Appeals of the appraisal decision of the commissioner may be taken pursuant to section 37-215 to the board of appeals, established by section 37-213, which shall affirm, modify or reverse the decision of the commissioner within one hundred eighty days. Decisions of the board of appeals under this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6. As a condition of the appeal, the lessee must continue to make all rental and royalty payments due based on the commissioner's final appraisal decision, and the court shall not stay the commissioner's decision, in whole or in part, pending a final disposition of the case. The state treasurer shall segregate rents and royalties paid while an appeal is pending and shall not distribute such monies to the state general fund or to the trust beneficiaries until the appeal is completed.

K. If a lessee fails to pay rent or royalty, including appraisal costs under subsection C of this section, on or before the date the payment is due, the amount due accrues interest at the rate and in the manner determined pursuant to section 42-134. In addition, if it is determined that the failure to pay is not due to reasonable cause, a penalty of five per cent of the amount found to be remaining due shall be added to the rent or royalty for each month or fraction of a month elapsing between the due date and the date on which it is paid. The total penalty shall not exceed one-third of the rent or royalty remaining due. The penalty so added to the rent or royalty is due and payable on notice and demand from the commissioner.

L. If any rent, royalty, appraisal assessment, interest or penalty is not paid by the lessee when due, the unpaid amounts constitute a lien from the date the amounts become due on all property and rights to property belonging to the lessee that are located on state land.

APPROVED BY THE GOVERNOR MARCH 25, 1996

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