

SENATE CS FOR CS FOR HOUSE BILL NO. 46(FIN) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/5/97

Offered: 4/11/97

Sponsor(s): REPRESENTATIVES KELLY AND THERRIAULT, James

SENATORS Leman, Wilken, Sharp, Taylor, Green, Pearce, Miller

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mining; and providing for an effective date."

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

3 * Section 1. AS 27.21.100(b) is amended to read:

4 (b) Copies of records, permits, inspection materials, **data obtained under**
5 AS 27.21.120, or other information obtained under this chapter by the commissioner
6 relating to a surface coal mining and reclamation operation, other than information that
7 is confidential under (c) of this section, must be made immediately and conveniently
8 available to the public at the district office of the department closest to the location of
9 the surface coal mining and reclamation operation.

10 * Sec. 2. AS 27.21.120 is amended to read:

11 Sec. 27.21.120. Small operator assistance. (a) The provisions of this
12 section apply when [IF] the commissioner finds that the probable total annual
13 production of all of the surface coal mining operations of an applicant or, if the
14 applicant is a subsidiary of another corporation, [OF] the applicant's parent corporation
15 and its subsidiaries [,] will not exceed 300,000 [100,000] tons.

(b) At [, THE COMMISSIONER SHALL, AT] the written request of an
[THE] applicant, the commissioner shall

(1) determine, for each applicant or applicant's parent corporation
and subsidiaries, as appropriate, the data that may be necessary in order to

(A) evaluate the probable hydrologic consequences of the
applicant's surface mining and reclamation operations in the proposed
permit area and adjacent areas;

(B) evaluate the results of test borings on core samplings for
the proposed permit area;

(C) develop cross-section maps and plans, if required;

(D) fulfill archeological and historic information required by
AS 44.37.040(3);

(E) fulfill all requirements that are imposed on the applicant
or the applicant's parent corporation and subsidiaries if, under a
regulation adopted under authority of this chapter, the applicant or
applicant's parent corporation is required to complete a preblasting survey
of nearby dwellings or structures and to prepare a report of the survey;
and

(F) fulfill requirements applicable to collecting site-specific
resources information, producing protection and enhancement plans for
fish and wildlife habitats and for subsistence uses of the permit area and
adjacent areas, and preparing information and plans for any other
environmental values; and

(2) to the maximum extent possible with money appropriated,
engage, at no cost to the applicant, a qualified laboratory to collect, analyze, and
report the results of the data for the tasks set out in (1)(A) - (F) of this subsection
[PREPARE A DETERMINATION OF PROBABLE HYDROLOGIC
CONSEQUENCES OF THE APPLICANT'S PROPOSED OPERATION AND A
STATEMENT OF TEST BORING OR CORE SAMPLINGS IF THESE ARE
REQUIRED BY REGULATIONS ADOPTED UNDER AS 27.21.110].

* **Sec. 3.** AS 27.21.120 is amended by adding a new subsection to read:

(c) The collection and analysis of data under (b)(2) of this section may proceed concurrently with the applicant's development of a reclamation plan.

* **Sec. 4.** AS 27.30.020 is amended to read:

Sec. 27.30.020. Procedure for requesting and taking the credit. To obtain the credit authorized by this chapter,

(1) a person shall submit a request for the credit as follows:

(A) the person may [SHALL] submit a request and a statement of expenditures

(i) whenever the amount of credit certified in the request totals at least \$250,000 and the period covered is at least one year; or

(ii) when the person is ready to take the entire balance of the credit, regardless of the total amount of the credit [FOR THE PREVIOUS CALENDAR YEAR NOT LATER THAN 60 DAYS AFTER THE CLOSE OF THAT CALENDAR YEAR];

(B) the request must be on a form provided by the department and

(i) describe the work accomplished during each [THE PREVIOUS] year of the period covered by the request, the number of employees, and the names and number of consultants; [AND]

(ii) provide a detailed list or ledger of expenditures of the accomplishments described in (i) of this subparagraph and a list of exploration activity data that [IN THE FUTURE] will be provided [MADE AVAILABLE] to the department [COMMISSIONER UNDER (2)(a) OF THIS SECTION]; and

(iii) provide a statement by a certified public accountant that expenditures are supported by receipts for all activities eligible for the credit under AS 27.30.010(a) for each calendar year that these expenditures for a single mining operation equal or exceed \$40,000;

(C) the person submitting the request is not required to transmit

copies of receipts with the request, but the statement of expenditures is subject to audit in the discretion of the commissioner;

(D) if the commissioner determines to audit the statement of expenditures, the commissioner may require the person submitting the request to justify claims of expenditures with receipts and other reliable information;

(E) the commissioner shall respond to the request **within six months of the date of submission of the request** [BY SEPTEMBER 30] by certifying or not certifying the person's expenditures; if the commissioner

(i) does not certify **all of the** expenditures, the commissioner shall state the reasons for denial of certification **of the expenditures not certified** and give the person making the request an opportunity to correct any problems or to provide additional information;

(ii) certifies expenditures, the commissioner shall specify the exploration activity data requirements [FOR THAT YEAR] that must be presented to the department at the time of the taking of the credit;

(F) if the commissioner neither certifies nor denies certification of expenditures **within six months of the date of submission of the request** [BY SEPTEMBER 30], the expenditures are certified as submitted;

(2) the person whose expenditures have been certified under (1) of this subsection may thereafter request the taking of the credit for the certified expenditures as follows:

(A) the person shall deliver to the commissioner the exploration activity data identified by the commissioner under (1)(E)(ii) of this section [,] and shall request the commissioner's approval of the taking of the credit;

(B) the commissioner shall approve or disapprove the taking of the credit within **60 days** [SIX MONTHS] after receipt of the request for taking of the credit; if the

(i) exploration activity data complies with the requirements identified by the commissioner under (1)(E)(ii) of this

section, the commissioner shall approve the taking of the credit **and shall, within 30 days, notify the Department of Revenue that the taking of the credit has been approved;**

(ii) request is disapproved, the commissioner shall state the reasons for disapproval and offer the person seeking to take the credit an opportunity to correct any problems or to provide additional exploration activity data or other information;

(C) if the commissioner neither approves nor disapproves the request to take the credit within **60 days** [SIX MONTHS] after submission of the request, the taking of the credit is approved; **the commissioner shall, within 30 days, notify the Department of Revenue that the taking of the credit has been approved under this subparagraph.**

* **Sec. 5.** AS 27.30 is amended by adding a new section to read:

Sec. 27.30.025 Conditional certification. (a) A person may submit a request for conditional certification for the credit when

(1) the person has conducted or intends to conduct exploration activities using an innovative technique;

(2) there exists a substantial question regarding the nature of the exploration data that will be delivered to the department; or

(3) the person contemplates assigning a credit under AS 27.30.060 and there exists a substantial question regarding whether the expenditures will be certified.

(b) A person shall submit a request for conditional certification on a form provided by the department.

(c) The commissioner shall respond to the request within six months from the date of the submission of the request for conditional certification by issuing a letter stating that

(1) under the specific facts and circumstances proposed by the person, the proposed expenditures and data appear eligible for a credit;

(2) there is not adequate information to determine whether the proposed expenditures and data appear to be eligible for a credit; or

(3) the expenditures and data as presented do not appear to be eligible

1 for a credit.

2 (d) Approval of conditional certification under (c)(1) of this section does not
3 relieve a person from obtaining certification of the credit under AS 27.30.020.

4 * **Sec. 6.** AS 27.30.030(c) is amended to read:

5 (c) The person may not apply the credit under this section if the application[,
6 WHEN ADDED TO CREDITS PREVIOUSLY APPLIED UNDER THIS SECTION,]
7 would exceed the total amount of the credits approved under AS 27.30.020(2).

8 * **Sec. 7.** AS 27.30 is amended by adding a new section to read:

9 **Sec. 27.30.095. Fees.** The commissioner may charge a fee for the direct costs
10 incurred by the department and the Department of Revenue for evaluating or auditing
11 an application to certify the credit authorized under AS 27.30.010, including the cost
12 of contractors selected by the commissioner to assist in the evaluation or audit. The
13 fee may not exceed

14 (1) \$500 for each application covering one or more years if the amount
15 claimed in the application is \$1,000,000 or less;

16 (2) \$1,000 for each application covering one or more years if the
17 amount claimed is more than \$1,000,000.

18 * **Sec. 8.** AS 38.05.035(e)(5) is amended to read:

19 (5) public notice requirements relating to the sale, lease, or other
20 disposal of available land or an interest in land for oil and gas proposed to be
21 scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), except
22 for a sale under (6)(F) [(6)(G)] of this subsection, are as follows:

23 (A) before a public hearing, if held, or in any case not less than
24 180 days before the sale, lease, or other disposal of available land or an interest
25 in land, the director shall make available to the public a preliminary written
26 finding that states the scope of the review established under (1)(A) of this
27 subsection and includes the applicable statutes and regulations, the material
28 facts and issues in accordance with (1)(B) of this subsection, and information
29 required by (g) of this section, upon which the determination that the sale,
30 lease, or other disposal will serve the best interests of the state will be based;
31 the director shall provide opportunity for public comment on the preliminary

1 written finding for a period of not less than 60 days;

2 (B) after the public comment period for the preliminary written
3 finding and not less than 90 days before the sale, lease, or other disposal of
4 available land or an interest in land for oil and gas, the director shall make
5 available to the public a final written finding that states the scope of the review
6 established under (1)(A) of this subsection and includes the applicable statutes
7 and regulations, the material facts and issues in accordance with (1) of this
8 subsection, and information required by (g) of this section, upon which the
9 determination that the sale, lease, or other disposal will serve the best interests
10 of the state is based;

11 * **Sec. 9.** AS 38.05.035(e)(6) is amended to read:

12 (6) before a public hearing, if held, or in any case not less than 21 days
13 before the sale, lease, or other disposal of available land, property, resources, or
14 interests in them other than a sale, lease, or other disposal of available land or an
15 interest in land for oil and gas under (5) of this subsection, the director shall make
16 available to the public a written finding that, in accordance with (1) of this subsection,
17 sets out the material facts and applicable statutes and regulations and any other
18 information required by statute or regulation to be considered upon which the
19 determination that the sale, lease, or other disposal will best serve the interests of the
20 state was based; however, a written finding is not required before the approval of

21 (A) a contract for a negotiated sale authorized under
22 AS 38.05.115;

23 (B) a lease of land for a shore fishery site under AS 38.05.082;

24 (C) a permit or other authorization revocable by the
25 commissioner;

26 (D) a mineral claim located under AS 38.05.195;

27 (E) a mineral lease issued under AS 38.05.205;

28 (F) [A PRODUCTION LICENSE ISSUED UNDER
29 AS 38.05.207; OR

30 (G)] an exempt oil and gas lease sale under AS 38.05.180(d) of
31 acreage subject to a best interest finding issued within the previous 10 years or

a reoffer oil and gas lease sale under AS 38.05.180(w) of acreage subject to a best interest finding issued within the previous 10 years, unless the commissioner determines that substantial new information has become available that justifies a supplement to the most recent best interest finding for the exempt oil and gas lease sale acreage and for the reoffer oil and gas lease sale acreage; however, for each oil and gas lease sale described in this subparagraph, the director shall call for comments from the public; the director's call for public comments must provide opportunity for public comment for a period of not less than 30 days; if the director determines that a supplement to the most recent best interest finding for the acreage is required under this subparagraph,

(i) the director shall issue the supplement to the best interest finding not later than 90 days before the sale;

(ii) not later than 45 days before the sale, the director shall issue a notice describing the interests to be offered, the location and time of the sale, and the terms and conditions of the sale; and

(iii) the supplement has the status of a final written best interest finding for purposes of (i) and (l) of this section;

(G) [(H)] a shallow gas lease authorized under AS 38.05.177 in an area for which leasing is authorized under AS 38.05.177;

(H) a surface use lease under AS 38.05.255;

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

(d) The commissioner

(1) may annually offer oil and gas leases of the acreage described in AS 38.05.035(e)(6)(F) [AS 38.05.035(e)(6)(G)];

(2) may issue oil and gas leases in an area that has not been included in a leasing program prepared, in accordance with (b) of this section, if the land to be leased

(A) was previously subject to a valid state or federal oil and gas lease;

(B) is contiguous to land already under state, federal, or private

1 lease and the commissioner makes a written finding, after hearing, that leasing
 2 of the land would result in a substantial probability of early evaluation and
 3 development of the land to be leased;

4 (C) is adjacent to land owned or controlled by another party on
 5 which a discovery of commercial quantities of oil or gas has been made, and
 6 the commissioner finds, after hearing, that there is a reasonable probability that
 7 the land to be leased contains oil or gas in communication with the oil or gas
 8 discovered on the land of the other party;

9 (D) is adjacent to land included in the federal five-year Outer
 10 Continental Shelf leasing program under 43 U.S.C. 1344, and the commissioner
 11 makes a written finding, after hearing, that coordinated or simultaneous leasing
 12 with the federal government is in the public interest; or

13 (E) is the subject of an oil and gas exploration license issued
 14 under AS 38.05.131 - 38.05.134.

15 * **Sec. 11.** AS 38.05.185(a) is amended to read:

16 (a) The acquisition and continuance of rights in and to deposits on state land
 17 of minerals, which on January 3, 1959, were subject to location under the mining laws
 18 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
 19 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
 20 mineral deposits owned by any other person or government. The director, with the
 21 approval of the commissioner, shall determine that land from which mineral deposits
 22 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
 23 land that shall be closed to **location under AS 38.05.185 - 38.05.275** [MINING].
 24 State land may not be closed to [MINING OR MINERAL] location **under**
 25 **AS 38.05.185 - 38.05.275** except as provided in AS 38.05.300 and unless the
 26 commissioner makes a finding that mining would be incompatible with significant
 27 surface uses on the state land. State land may not be restricted to mining under lease
 28 unless the commissioner determines that potential use conflicts on the state land
 29 require that mining be allowed only under written leases issued under AS 38.05.205
 30 or the commissioner has determined that the land was mineral in character at the time
 31 of state selection. The determinations required under this subsection shall be made in

1 compliance with land classification orders and land use plans developed under
2 AS 38.05.300.

3 * **Sec. 12.** AS 38.05.190(a) is amended to read:

4 (a) The right to acquire exploration and mining rights under AS 38.05.185 -
5 38.05.275 may be acquired or held only by

6 (1) citizens of the United States at least 18 years of age;

7 (2) legal guardians or trustees of citizens of the United States under 18
8 years of age on behalf of the citizens;

9 (3) persons at least 18 years of age who have declared their intention
10 to become citizens of the United States;

11 (4) aliens at least 18 years of age if the laws of their country grant like
12 privileges to citizens of the United States;

13 (5) corporations organized under the laws of the United States or of any
14 state or territory of the United States and qualified to do business in this state [,
15 EXCEPT THAT IF MORE THAN 50 PERCENT OF THE STOCK OF A
16 CORPORATION IS OWNED OR CONTROLLED BY ALIENS WHO ARE NOT
17 QUALIFIED, THE CORPORATION IS NOT QUALIFIED TO ACQUIRE OR HOLD
18 THE RIGHTS];

19 (6) associations of persons described in (1) - (5) of this subsection.

20 * **Sec. 13.** AS 38.05.211(d) is repealed and reenacted to read:

21 (d) The rental amount established under this section shall be revised by the
22 commissioner as provided in this section based on changes in the Consumer Price
23 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)
24 compiled by the Bureau of Labor Statistics, United States Department of Labor, as
25 revised, rebased, or replaced by that bureau. The reference base index is the index for
26 January - June 1989, as revised or rebased by that bureau. The rental amount shall be
27 increased or decreased, as appropriate, by an amount equal to the change in the index
28 described in this subsection rounded to the nearest whole \$5 unit. The commissioner
29 shall calculate the change in the rental amount each 10 years and, if the rental amount
30 must be revised, shall adopt a regulation establishing the revised rental amount. A
31 revised rental amount applies to a rental payment if the regulation establishing the

revised rental amount took effect at least 90 days before the date the rental payment is due.

* **Sec. 14.** AS 38.05.255 is amended to read:

Sec. 38.05.255. Surface use of land or water. Surface uses of land or water included within a mining property [PROPERTIES] by the owners, lessees, or operators [OF THOSE PROPERTIES] shall be limited to those necessary for the prospecting for, extraction of, or basic processing of minerals [MINERAL DEPOSITS] and shall be subject to reasonable concurrent uses. Leases [PERMITS] for millsites, [AND] tailings disposal, and other mine related facilities may be issued [GRANTED] by the director. The leases [PERMITS] shall be conditioned upon payment of a reasonable annual rent [CHARGE] for the lease [USE] and restricted to uses approved by the director [CONTINUANCE OF THE LIMITED USE]. Timber from land open to mining without lease, except timberland, may be used by a mining claimant or prospecting site locator for the mining or development of the location or adjacent claims under common ownership. On other land, timber may be acquired as provided in this chapter. Use of water shall be made in accordance with AS 46.15.

* **Sec. 15.** AS 38.05.255 is amended by adding a new subsection to read:

(b) A lease issued under this section is exempt from the provisions of AS 38.05.075 - 38.05.080.

* **Sec. 16.** AS 38.05.265 is amended to read:

Sec. 38.05.265. Abandonment. Failure to properly record a certificate of location or a statement of annual labor, [FILE WITH THE DIRECTOR WITHIN THE TIME PRESCRIBED A LEASE APPLICATION,] pay any required annual rental, pay any required production royalty, or keep location boundaries clearly marked as required by AS 38.05.185 - 38.05.200, 38.05.207 - 38.05.245, 38.05.252 - 38.05.275, [AS 38.05.185 - 38.05.275] and by regulations adopted under these sections constitutes abandonment of all rights acquired under the mining claim, leasehold location, [LEASE,] or site involved, and the claim, location, [LEASE,] or site is subject to relocation by others. A locator or claimant of an abandoned location or a successor in interest may not relocate the location until one year after abandonment. A statement

1 of annual labor that does not accurately set out the essential facts is void and of no
 2 effect. If an annual rental or a royalty payment is deficient but is otherwise timely
 3 paid, abandonment does not result if full payment is made within

4 (1) the period prescribed by a deficiency notice from the commissioner;
 5 or

6 (2) 30 days after a final judgment establishing the amount due if the
 7 deficiency amount due was contested.

8 * **Sec. 17.** AS 38.05.945(a) is amended to read:

9 (a) This section establishes the requirements for notice given by the department
 10 for the following actions:

11 (1) classification or reclassification of state land under AS 38.05.300
 12 and the closing of land to mineral leasing or entry under AS 38.05.185;

13 (2) zoning of land under applicable law;

14 (3) issuance of a

15 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
 16 regarding the sale, lease, or disposal of an interest in state land or resources for
 17 oil and gas subject to AS 38.05.180(b);

18 (B) final written finding under AS 38.05.035(e)(5)(B) regarding
 19 the sale, lease, or disposal of an interest in state land or resources for oil and
 20 gas subject to AS 38.05.180(b);

21 (C) written finding for the sale, lease, or disposal of an interest
 22 in state land or resources under AS 38.05.035(e)(6), except an oil or gas lease
 23 sale described in AS 38.05.035(e)(6)(F) [AS 38.05.035(e)(6)(G)] for which the
 24 director must provide opportunity for public comment under the provisions of
 25 that subparagraph;

26 (4) a competitive disposal of an interest in state land or resources after
 27 final decision under AS 38.05.035(e);

28 (5) a public hearing under AS 38.05.856(b);

29 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
 30 concerning sites for aquatic farms and related hatcheries;

31 (7) a decision under AS 38.05.132 - 38.05.134 regarding the sale, lease,

1 or disposal of an interest in state land or resources.

2 * **Sec. 18.** AS 41.23 is amended by adding a new section to read:

3 **Sec. 41.23.630. Petersville Recreational Mining Area.** (a) The purpose of
4 this section is to establish the area described in (f) of this section as the Petersville
5 Recreational Mining Area. The Petersville Recreational Mining Area is established to
6 provide for a public recreational mining area to permit public recreational activities and
7 to allow other multiple-use activities to continue as long as the activities do not detract
8 from the primary purpose for the establishment of the Petersville Recreational Mining
9 Area.

10 (b) The commissioner is responsible for the management of the surface and
11 subsurface estate within the Petersville Recreational Mining Area necessary to carry
12 out the purposes of this section. The commissioner shall adopt and may revise a
13 management plan and shall adopt regulations for the management, use, and
14 development of the Petersville Recreational Mining Area. The management plan,
15 including any revisions, and regulations adopted by the commissioner shall be
16 developed in consultation with the commissioner of fish and game and the
17 commissioner of transportation and public facilities. The management plan and
18 regulations must address, but not be limited to,

19 (1) the methods of mining permitted within the Petersville Recreational
20 Mining Area;

21 (2) the types of mining equipment that may be used within the
22 Petersville Recreational Mining Area;

23 (3) the protection of habitat within the Petersville Recreational Mining
24 Area; and

25 (4) other restrictions consistent with the purposes stated in this section.

26 (c) Except as provided in this subsection, the Petersville Recreational Mining
27 Area is open to recreational mining under this section. The commissioner of fish and
28 game is responsible for the management of the fish and game resources and the public
29 use of fish and wildlife resources within the Petersville Recreational Mining Area
30 consistent with the purposes stated in this section. The commissioner of fish and game
31 shall issue a general permit to the public authorizing recreational mining activities

subject to seasonal restrictions on the mining activities within specified waterbody areas necessary to maintain fishery resources within the Petersville Recreational Mining Area.

(d) The Petersville Recreational Mining Area is closed to mineral entry under AS 38.05.185 - 38.05.275.

(e) The commissioner shall permit the construction and realignment of the Petersville Road within the Petersville Recreational Mining Area as is determined necessary by the commissioner of transportation and public facilities.

(f) The vacant and unappropriated state-owned land and water and the state land and water acquired in the future that lie within the following described mining claims described in United States Mineral Survey No. 2384 are reserved from all uses incompatible with the purposes of this section and are assigned to the department for control and management as the Petersville Recreational Mining Area:

(1) Township 28 North, Range 8 West, Seward Meridian

Sections 6 - 8: Daisy No. 2; Hidden Treasure No. 1; Hidden Treasure No. 2; Flora No. 1; Flora No. 2; Moose No. 1; Beaver No. 1; Alexander No. 1; Alexander No. 2; Lost Shovel No. 1; Lost Shovel No. 2; Peters Creek No. 8; Peters Creek No. 9; Peters Creek No. 10; Peters Creek No. 11;

Sections 21 and 28: Alder No. 1; Alder No. 2; Cottonwood No. 3; Cottonwood No. 4; Seattle No. 1; Seattle No. 2; Contact No. 1; Contact Claim No. 2; Willow Claim; Korter Bench.

(2) Township 28 North, Range 9 West, Seward Meridian

Section 1: Daisy No. 2; Hidden Treasure No. 1.

* **Sec. 19.** AS 38.05.207 and 38.05.945(g) are repealed.

* **Sec. 20.** Nothing in secs. 8 - 17 and 19 of this Act is intended to impair, remove, or deny any valid, prior existing rights that have been acquired by a miner through location, license, lease, or permit.

* **Sec. 21.** TRANSITIONAL PROVISIONS: REGULATIONS. Notwithstanding sec. 22 of this Act, the Department of Natural Resources may proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62

- 1 (Administrative Procedure Act), but not before July 1, 1997.
- 2 * **Sec. 22.** Except for secs. 18 and 21 of this Act, this Act takes effect July 1, 1997.
- 3 * **Sec. 23.** Sections 18 and 21 of this Act take effect immediately under AS 01.10.070(c).