

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**March 13, 2003**  
**9:05 AM**

**TAPES**

SFC-03 # 20, Side A

**CALL TO ORDER**

Co-Chair Gary Wilken convened the meeting at approximately 9:05 AM.

**PRESENT**

Senator Gary Wilken, Co-Chair  
Senator Lyda Green, Co-Chair  
Senator Con Bunde, Vice-Chair  
Senator Robin Taylor  
Senator Ben Stevens  
Senator Lyman Hoffman

**Also Attending:** NEIL MACKINNON, Vice Chair, Alaska Minerals Commission, and President of Hyak Mining Co.; DR. LANCE MILLER, Member, Alaska Minerals Commission and Executive Director, Juneau Economic Development Council

**Attending via Teleconference:** From an Offnet Site: STAN FOO, Mining Section Manager, Division of Mining, Land and Water, Department of Natural Resources

**SUMMARY INFORMATION**

SB 79-EXTEND ALASKA MINERALS COMMISSION

The Committee heard from the sponsor, members of the Alaska Minerals Commission, and the Department of Natural Resources. The bill reported from Committee.

#SB79

SENATE BILL NO. 79

"An Act extending the termination date of the Alaska Minerals Commission."

This was the first hearing for this bill in the Senate Finance Committee.

Senator B. Stevens, the bill's sponsor, explained that this legislation extends the termination date of the Alaska Minerals Commission until 2014. He stated that the Commission is comprised of eleven members and was established in 1986. He noted that the Commission's mission is to provide recommendations and suggestions to mitigate constraints on the development of minerals in the State.

Senator B. Stevens brought attention to the Commission's seven recommendations on page vii of the 2003 Alaska Minerals Commission report [copy on file]. He stated that these recommendations "resonate the objectives of the current Administrative in trying to find ways to develop the infrastructure to have access to the natural resources of the State and bring them to market." He encouraged the Committee to support this legislation.

Senator Hoffman asked whether the Division of Legislative Budget and Audit conducted an audit regarding the extension of the Commission.

Senator B. Stevens stated that an audit was not conducted.

NEIL MACKINNON, Vice Chair, Alaska Minerals Commission, and President of Hyak Mining Co. spoke in favor of the bill.

Senator Taylor encouraged the industry and the Commission to develop draft legislation to address industry's concerns and further the Commission's recommendations. He mentioned that water quality standards set by the Department of Environmental Conservation, and in particular, drinking water regulations that negatively affected placer miners, could be addressed. He suggested a bill requiring that State standards not exceed federal water quality guidelines would be an example of appropriate legislation.

Mr. MacKinnon responded that, historically, the Commission presents broad, rather than specific, recommendations to the Legislature.

Senator Taylor reiterated that draft legislation would be welcome.

Mr. MacKinnon cited Section 1c) "Water Quality Standards" on page three of the report as follows. He relayed the Commission recommendation that revisions to the Alaska water quality standards be adopted.

1c) Water Quality Standards

Findings: When municipal water treatment plants or industrial projects require water discharge permits, the Department of Environmental Conservation must insure that the proposed discharge will meet the State of Alaska water quality standards for various parameters. Due to the rapidly advancing science on both the potential environmental effects of these parameters and the changing technology for detecting the very low concentrations, the most appropriate numerical criteria for these parameters keeps advancing.

In 1999, the U.S. Environmental Protection Agency (EPA) approved a new list of water quality criteria that updated many of the numerical criteria. The EPA also responded to the environmental science that had developed over the years and replaced the old total recoverable values with new dissolved criteria.

In recognition of this advancing science, the Department of Environmental Conservation proposed revisions to the Alaska water quality standards on August 2, 2002. The public comment period on these proposed changes was completed in October, 2002. These revisions need to be adopted by the State immediately, and forwarded to the EPA for review and approval.

The Commission Recommends That:

The Governor should instruct the Department of Environmental Conservation to adopt the revisions to the Alaska water quality standards as proposed on August 2, 2002.

Senator Taylor asked whether the Administration has acted upon the recommendation.

Mr. MacKinnon responded that was unaware whether the recently elected Administration has had an opportunity to address the report's recommendations.

Senator Taylor questioned whether regulatory changes would be sufficient.

Mr. MacKinnon replied that other recommendations in the report include 1a) "Litigation Reform" recommendations that have, he noted, been purposefully placed at the beginning of the recommendation list. He noted that 1b) "Permit Efficiency" recommendations are being furthered by "the movement" of the Division of Habitat and the Division of Governmental Coordination into the Department of Natural Resources. These sections read as follows.

1) Regulatory Reform

1a) Litigation Reform

Finding: A critical component to resource development in the State of Alaska is insuring that development projects, once permitted by the appropriate State Agencies, can proceed without delay. Unfortunately, groups opposed to development routinely file litigation with the sole objective of either preventing or delaying permitted development. Often the basis for the litigation is without merit. Under Alaska's current law, such groups, regardless of financial resources or membership composition, can routinely qualify as "public interest litigants", in which case there is absolutely no financial downside to them if they lose the litigation. The net result is that there is no disincentive to these groups not to pursue litigation. As a consequence, the State of Alaska as well as industry and developers are forced to defend themselves in lengthy and costly litigation with little chance of recovering any costs or attorney fees woven when they prevail in the litigation.

The groups that regularly oppose resource development are not simply concerned citizen groups but more often special interest groups supported financially by national and/or international organizations whose stated mission is resource preservation. The result of these systematic and orchestrated lawsuits files by purported "public interest litigants is inhibiting development by escalating development costs, both in terms of real dollars spent on litigation and lost dollars due to delays. Modifying Alaska's existing rules and regulations for proposals where public input and administrative appeal was afforded by eliminating "public interest litigant" status in Administrative appeal decisions and awarding fees and costs to the prevailing party in litigation ensures a level playing field. Likewise, requiring disclosure of funding sources by those who seek to qualify as litigants and/or who seek to file an Administrative Appeal allow those defending the litigation to know the identity of those who are actually supporting the litigation and the amount of that financial support.

Modification of Alaska's existing "public interest litigant" rules and regulations is not aimed at preventing litigants from pursuing administrative appeals, rather the intent is one of fundamental fairness- ensuring that the identity of those who initiate the litigation are know and that the potential negative consequence of such litigation are borne equally by all parties to the litigation. The objective is not to inhibit meritorious litigation, but rather to inhibit frivolous litigation by ensuring that there is a consequence to those who file and support such litigation.

If responsible resource development is to be promoted and

achieved, it is imperative that once development projects are permitted they are not delayed, by individuals, or entities that choose to pursue frivolous litigation. Modifying Alaska's existing rules and regulations regarding "public interest litigants" is critical to promoting and achieving responsible resource development in the State of Alaska.

The Commission Recommends That:

1a.1) Public Interest Litigant Status needs to be limited. The Legislature should modify existing State Statutes to specifically provide for any party bringing a civil action seeking judicial review of Administrative Agency decisions, in which they were afforded an opportunity for public input and administrative appeal, not be awarded "public interest litigant" status. Furthermore, the prevailing party in such civil action shall be entitled to an award of attorney fees and costs as in other civil actions.

1a.2) Funding Sources need to be disclosed. The Legislature should modify existing State Statutes to require that a condition of obtaining litigant status and/or of filing an Administrative Appeal, under regulations, is the initial and supplemental disclosure of the identity of those who provide funding to the entity who seeks litigant status and/or initiates an Administrative appeal and the amount of such funds during the past two years and during the term of the Administrative Appeal.

1b) Permit Efficiency

Finding: A key element in marketing Alaska as an attractive and competitive place to do business is the ability to process permit applications in a responsible, consistent and expeditious manner.

In the 2001 legislative session, funding was provided for the Alaska Department of Environmental Conservation (ADEC) to reconstitute the qualified core of water quality permitting staff. Equally important to adequate funding, the agencies need the flexible management tools necessary to provide responsive, effective, and efficient management of permitting issues.

Permitting delays negatively impact business in Alaska. Delays are often due to staffing shortages which creates backlogs for industry project permit review.

To help resolve this problem, ADEC had recently utilized the Department of Natural Resources (DNR) authority for third party contracting through the Large Mine Permit process, and has contracted directly with third party contractors to assist with permit review. ADEC is also planning to select one or

more individuals/firms that would be available on-call to provide technical assistance to a permitting team regarding risk assessments and monitoring requirements for National Pollutant Discharge Elimination System (NPDES) discharges, and mixing zones for placer miners.

Supplementing permanent staff during permit development is a positive step that will allow agencies to respond more readily to the intermittent demands associated with industry growth. Further, it will support the limited number of permanent staff personnel via access to the varied technical and scientific expertise required for responsible permitting.

In some circumstances, permitting delay has been characterized by industry as "procedural duress." Industry recognizes that permitting review is an iterative process through discussion and supplementing of relative information, public review, comment and response to comment. However, an unreasonable extension of any of these elements can lead to costly and unnecessary delay. At present there are instances where State requests for additional information, and subsequent time extensions, appear to be based on a partial or cursory review. This results in additional time delay through multiple information requests. Further concern is often raised regarding extension of public review and comment periods. This practice is detrimental to the agency, to the industry, and ultimately to economic development within Alaska, potentially leading to the loss of millions of dollars in revenue, and related monetary losses in taxes and royalties.

Permitting agencies need to ensure that the permitting process is not unnecessarily extended. Initial permit review should result in a single and complete list of information deficiencies. Additional requests for information should be limited to questions arising out of new information.

The Alaskan industries, agencies, Administration, and Legislature can work together to provide responsible and reliable permitting that ensures the protection of the environment and a sound future. For this to happen, we cannot be complacent in trying to improve permitting efficiency through funding alone. All of the recommendations provided must occur in concert for Alaska to fulfill its potential for sustainable and attractive resource development.

The Commission Recommends that:

- 1b.1) The Administration must continue to aggressively search for and find means to accommodate the use of third-party contractors who will work under the core managers to provide permit development supports on an as-needed basis and extend these efforts to all types of environmental and resource permitting. The Legislature needs to

- encourage and support the Administration in this effort.
- 1b.2) The Legislature should require a periodic permitting status report accounting for agency staff and management.
  - 1b.3) Salary scales for public workers must be improved relative to the private sector in order to retain competent staff

Senator Hoffman asked the status of the issue regarding the construction of large permanent buildings at mining sites.

Mr. MacKinnon responded that this issue has not been addressed by the Commission "for quite some time." He noted that the removal of cabins and other structures has been discussed.

Senator Hoffman commented that the issue of constructing new large buildings, particularly in remote, large project areas such as the developing Donlin Creek mining site, should be readdressed.

Mr. MacKinnon professed that the Commission has addressed the issue of cabins and other structures that present an obstacle to the development of a mining site. However, he continued, buildings in general have been discussed in "a general context."

Co-Chair Wilken observed that the Alaska Minerals Commission's "report is laced with recommendations." He asked whether the Commission members, upon the completion of the report, place themselves in an advocacy position or whether they present the report to the Legislature to act upon. He aired that furthering these recommendations would be "important to the industry." Therefore, he questioned "the role" that the Commission "plays" after the report is provided to the Governor and the Legislature.

Mr. MacKinnon responded that, historically, the Commission compiles the annual report and conducts a formal presentation to the Governor and the Legislature. He noted that oftentimes, a Legislator "takes an active role" in furthering a recommendation. He qualified that Commission members have not, historically, played a significant role with legislation.

Co-Chair Wilken asked whether the Commission has a legislative committee that furthers its recommendations.

Mr. MacKinnon responded that the Commission's limited budget provides funding for a few public meetings and the Legislative presentation.

Co-Chair Wilken opined that Commission members are "a pretty powerful group of people" who could use their positions to further

mining interests in the State. He suggested that Commission members join together to promote the industry.

Mr. MacKinnon asserted that members do follow issues. He exemplified that he personally follows essential fish habitat issues on the State and federal level, and that such things as water quality issues are followed by other members.

Co-Chair Green qualified that the stated purpose of the Commission is to provide the Legislature and the Governor with pertinent mining related information, and, she continued, it is the responsibility of the Legislature and the Governor to act upon the report. She commended the Commission on a "very good" report.

2b) Restricting the Use of Mining Airstrips

Finding: In many remote mining camps, the only feasible summer access is by use of an airstrip on, or adjacent to, the mining operation. Unauthorized use of these strips, often by commercial operations, can result in potentially unsafe condition, and the attendant threat of liability, both to the miner and to the State.

The Commission recommends that:

The Governor and the Legislature should direct the Division of Mining, Land & Water to mend the mining regulations so that when an airstrip is required for access to a specific mining operation, the Plan of Operation will allow the permit holder to restrict the use of the airstrip.

Co-Chair Green asserted that the Legislature had previously adopted legislation addressing the use of airstrips. She asked whether the industry is experiencing liability issues concerning the use of airstrips by non-industry related aircraft in remote locations.

Mr. MacKinnon responded that airstrips are a liability problem. He exemplified some of the situations that have occurred, and he stated that some placer miners are experiencing difficulty in obtaining insurance coverage if they cannot close the airstrip to casual users.

Senator Taylor responded that the Legislature addressed this issue "extensively" a few years prior. He stated that he remembers the adopted legislation "to provide relief" on this issue.

Co-Chair Green asked whether the State would be required to coordinate airstrip legislation with the Federal Aviation Agency (FAA).

DR. LANCE MILLER, Member, Alaska Minerals Commission and Executive Director, Juneau Economic Development Council, explained that the use of an airstrip is a FAA issue. He continued that although some airstrips are private, access would be required in emergency circumstances.

Co-Chair Green requested follow-up information be provided regarding the use of airstrips, as she stressed, this issue should be pursued.

Dr. Miller commented that it is important for the "diverse group" of Alaskans on the Commission to address issues affecting their industry. He highlighted the economic importance of mining in the State. He explained that this legislation proposes to extend the termination date of the Commission another ten years because, oftentimes, ten years is required for mining projects and issues to develop. He acknowledged the interest being bestowed upon the Commission's report by the Legislature.

STAN FOO, Mining Section Manager, Division of Mining, Land and Water, Department of Natural Resources testified from an offnet site to voice the Department's support of the legislation. He stated that "the Commission provides important and meaningful feedback," which serves as a "reality check" to the Governor, the Legislature and the Division on mining industry issues "as well as relevant land and water matters." He stated that the Commission includes broad geographic representation from large and small miners in the State.

Senator Bunde recognized the work conducted by the Commission. He spoke to recommendations in the report that seek appropriations of up to \$5 million in State funds. He asked, in consideration of the State's current budget situation, what the State could expect "as a return to the general fund" for the State's investment in the mining industry, in addition to the jobs and economic benefits the State receives.

Mr. Foo explained that, in addition to the job opportunities and economic benefits, the industry has annually contributed five to seven million dollars in mining royalties, mining license taxes, and mining claim rentals. He stated that these numbers are reflective of years in which mineral prices have been suppressed. He voiced that the Division anticipates an increase in claim staking activities, particularly in the Denali Block region, which would result in an increase in industry contributions to the State.

Co-Chair Green expressed that interest is being shown in expanding the differing types of geologic mapping of the State. She asserted

that the variety of mapping types should be centrally coordinated. She asked how the differing mapping approaches interrelate.

Mr. MacKinnon informed that geophysical and geological mapping is addressed on page nine of the report.

Dr. Miller expressed that the Geographic Information Systems (GIS) database contains a variety of the differing databases. He explained that geophysical mapping is subsurface; geological mapping denotes surface features such as rocks; and geospatial mapping includes roads and towns. He stated that while the various mappings are separate, they could be integrated to better plan development.

Co-Chair Green voiced support for "coordinated mapping."

Mr. MacKinnon commented that combining geological and geophysical maps would "put together the pieces of the puzzle."

Dr. Miller interjected that the different State agencies limit the scope of their individual projects to specific mapping and do not take into consideration, for example, the subsurface characteristics of an area. In other words, he explained the map does not provide the user with an in-depth overview

Senator Taylor specified that Wrangell is the only community in the State that has invested in geophysical mapping. He asserted that as a result of this undertaking, significant mine staking and activity has resulted in the area. He cited the report as recommending that additional mapping be conducted. He surmised that if 25 percent of the State funds appropriated for lobbying efforts to open the Arctic National Wildlife Refuge to oil exploration had instead been spent on surveying Alaska's mineral deposits, the State would have experienced significant growth in the mining industry. He opined that the State is "ignorant" of its mineral deposits.

Senator Bunde asked whether the State would conduct mapping efforts in conjunction with the United States Geological Survey (USGS).

Dr. Miller confirmed that the USGS and the Alaska Division of Geological and Geophysical Services (DGGS) jointly conduct mapping efforts.

Senator Taylor remarked that Legislators often ask the amount of return to the general fund that would be expected from a State investment in a project; however, he opined, this should oftentimes not be a criteria when the State is making efforts to enhance an industry. He noted that when an industry is healthy, contributions

to the general fund could be entertained. He spoke in favor of the Donlin Creek mining site and noted that the Red Dog Mine has provided employment opportunities and probably significantly reduced "the drain" on the State's welfare program

Co-Chair Wilken asked the location of the report's cover photograph.

Dr. Miller identified the cover photograph as depicting the airstrip at Donlin Creek.

Senator Hoffman, noting the structure shown in the cover photograph, asked whether it is permanent rather than a temporary building.

Mr. MacKinnon ascertained the structure could be a collapsible steel building.

Senator B. Stevens offered a motion to report SB 79 from Committee with individual recommendations and attached fiscal note.

There being no objections, SB 79 REPORTED from Committee with a previous \$9,500 fiscal note, dated February 27, 2003, from the Department of Community and Economic Development.

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#### **ADJOURNMENT**

Co-Chair Gary Wilken adjourned the meeting at 09:39 AM