

SENATE FINANCE COMMITTEE
March 13, 2020
9:04 a.m.

[9:04:44 AM](#)

CALL TO ORDER

Co-Chair von Imhof called the Senate Finance Committee meeting to order at 9:04 a.m.

MEMBERS PRESENT

Senator Natasha von Imhof, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Click Bishop
Senator Lyman Hoffman
Senator Donny Olson
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Cathy Giessel; Chad Hutchison, Council for the Senate Majority.

PRESENT VIA TELECONFERENCE

Ramona Monroe, Mining Attorney, Alaska Miners Association;
Greg Beischer, Alaska Miners Association; Deantha Crocket,
Executive Director, Alaska Miners Association.

SUMMARY

SB 155 EXPLORATION & MINING RIGHTS; ANNUAL LABOR

SB 155 was HEARD and HELD in committee for further consideration.

#sb155

SENATE BILL NO. 155

"An Act relating to exploration and mining rights; relating to annual labor requirements with respect to mining claims and related leases; relating to statements of annual labor; defining 'labor'; and providing for an effective date."

9:06:00 AM

SENATOR CLICK BISHOP, SPONSOR, discussed the bill. // He expressed that that bill was a "due process" bill for miners. He referenced Section 8, Article XI of the state constitution.

9:07:38 AM

CHAD HUTCHISON, COUNCIL FOR THE SENATE MAJORITY, addressed a presentation entitled "COMMITTEE SUBSTITUTE FOR SPONSOR SUBSTITUTE FOR SENATE BILL 155 (CSSSSB155(RES))," (copy on file). He detailed that the bill was a multi-year process bill that had been in the works since the Walker Administration.

Senator Bishop pointed out that the current administration embraced the concept of the bill and had worked closely with the sponsor.

9:08:45 AM

Mr. Hutchison looked at Slide 2, "This Bill is about Mining Rights":

- Mining - A large part of Alaska's past, present, and future.
- Alaska Constitution Article 8, Sec. 1 - General Policy
- Encourage development of the resources
- Alaska Constitution Article 8, Sec. 11 - Mineral Rights
- Designed for miners out in the field...not lawyers. Pursuant to Governor Dunleavy's "Open for Business" Policy.
- Based on "real world" experience.

Mr. Hutchison noted that there was an increase in interest in integrated electrical systems in the Lower 48 and Alaska could play a part creating conductors for electricity. He said that the American Energy Innovation Act had an

emphasis on mineral security and that many minerals were found in Alaska. He shared that mineral rights were established at statehood and were based on statements of annual labor, paying rents, royalties, and fees. He said that the bill was based on real world experience. He noted that helpful statistics were available.

[9:11:01 AM](#)

Senator Bishop relayed that the most recent update he had received indicated that the economic benefits of mining would be realized by the passage of the bill. He related that \$4 billion had been spent in the state on mining exploration since 1981. He said that capital was "waiting on the sidelines" for the legislation to pass. He noted that there were over 600 small mines in the state that had produced over \$105 million in 2016. He furthered that the economic impact to the state from small mining operations was considerable.

[9:12:27 AM](#)

Co-Chair Stedman asked to look at Slide 2. He assumed that the photo on the slide was a placer miner. He wondered why he was mining in a three-piece suit.

Senator Bishop thought the photograph looked like the miner was on the beach in Nome.

Mr. Hutchison thought the attire was a sign of the time.

[9:13:43 AM](#)

Mr. Hutchison moved to Slide 3, "EXAMPLE":

- Small miner in Alaska
- Small typo in date.
- Was forced to refile his claim.
- Tremendous risk! Top filing is an issue.
- Lost investment/equipment/time.
- Hurt production for Alaska.

Mr. Hutchison said that the slide focused on due process and proper notice.

Senator Bishop noted that the slide had been shown to each office as an affidavit of annual labor. He thought the

fourth bullet was the most important. He emphasized that the current law did not protect miner's rights or provide for due process.

[9:14:58 AM](#)

Mr. Hutchison noted that the typo referenced on Slide 3 was a date, which constituted abandonment and placed undue stress on the miner.

[9:15:21 AM](#)

Mr. Hutchison referenced Slide 4, "SECTIONS 1, 2, 3 DEAL WITH QUALIFICATIONS":

Section 1 - AS 38.05.190(a) is amended -
Qualifications

Adds that mining rights can be acquired by:

- Conservators of minors or incapacitated adults;
- Individuals at least 18 years of age or older who have declared their intentions to become citizens of the United States;
- Limited Liability Companies (LLCs);
- Registered trusts (with a qualified trustee)

[9:16:21 AM](#)

Co-Chair von Imhof asked about the first bullet point on the slide. She asked about the meaning of the bullet point.

Mr. Hutchison explained that guardianship existed in statute and allowed for the guardian to protect the miner. The update, he thought, would apply to small mining operations - such as placer mines in the Interior of the Alaska.

Co-Chair von Imhof suggested that the bullet point widened the net for guardianship. She addressed the second bullet point and asked whether there was a time limit for individuals that had declared their intentions to become citizens.

Mr. Hutchison stated there was no time limit in the legislation. He offered to provide more information at a later date.

[9:18:38 AM](#)

Mr. Hutchison turned to Slide 5, "SECTIONS 1, 2, 3 DEAL WITH QUALIFICATIONS (CONTINUED)":

Section 2 - AS 38.05.190(b) is repealed and reenacted

An unqualified person may become qualified or transfer the interest to a qualified person within 90 days after the department sends written notice. If the defect is not cured, the department may make a "void" declaration.

Mr. Hutchison explained that the intent was to ensure the ability for [proper notice, due process, and the ability to cure in a timely manner.

[9:19:45 AM](#)

Mr. Hutchison considered Slide 6, "SECTIONS 1, 2, 3 DEAL WITH QUALIFICATIONS (CONTINUED)":

- Section 3 - New subsections are added to AS 38.05.190. These are new subsections (c), (d), (e), (f), and (g).
- (c) - If the department learns that an unqualified person has acquired an interest, the department shall send written notice by certified mail, return receipt requested, to the most recent address on file.
- Interest will be void unless cured or transferred within 90 days.
- DNR may send an additional copy of notice by regular mail.
- (d) - Failure to comply will result in a "void." However, there shall be no "void" declaration if the person becomes qualified.
- (e) - An unqualified person can cure either before or after receiving notice. However, a person may not cure if there has been "void" declaration. If "void" a person cannot re-stake for one year

Mr. Hutchison thought it was an important facet of operations that proper notice be given to miners.

[9:21:16 AM](#)

Senator Olson had experienced that miners were not checking their mail regularly because their work took them far away from the post office, which meant that they certainly would

not be available to receive a certified letter. He wondered how to ensure a person was not taken advantage of by an unqualified person trying to file on top of them.

Mr. Hutchison noted that the subject was being addressed, and the bill proposed to add an additional layer of notice.

[9:22:31 AM](#)

Senator Wielechowski asked about Section 2 and Section 3 and asked about the definition of an "unqualified person."

Mr. Hutchison went back to Slide 4. He replied that examples would be a miner that did not have a conservator or an incapacitated adult that did not have a conservator.

Senator Wielechowski wondered how such a person could acquire an interest if they were unqualified.

Mr. Hutchison responded that the person could have received the claim through a will or some way through a small family community.

Co-Chair von Imhof noted that there were experts available to answer questions.

[9:24:04 AM](#)

RAMONA MONROE, MINING ATTORNEY, ALASKA MINERS ASSOCIATION (via teleconference), explained that a miner might acquire a mining interest without being qualified. She said that under current law, a limited liability company (LLC) would not be qualified. She related that some people might not be aware of that fact and transfer their mining interest to LLCs and the question was whether that invalidated their interest. She stated that there were things that could happen that would cause someone to acquire the interests before they became qualified.

[9:25:42 AM](#)

Mr. Hutchison displayed Slide 7, "SECTION 3 - CONTINUED"

- (f) - If the unqualified person fails to cure the defect within 90 days after the department sent written notice, the department may declare the exploration or mining interest "void" and open to

location. There shall be no third-party location or judicial action within those 90 days.

- (g) - "qualified to do business in this state" means holding a certificate issued by the Commissioner of Commerce, Community, and Economic Development (necessary to do business in the state).

[9:26:52 AM](#)

Mr. Hutchison highlighted Slide 8, "SECTIONS 4,5 DEAL WITH MINING CLAIMS":

- Section 4 - AS 38.05.195(b) - Establishment of deposit rights when using the Meridian, Township, Range, Section, and Claim system (MTRSC). How does MTRSC work? Location of a claim is based on ground locations of quarter sections, or, quarter by quarter sections of a township on a rectangular survey system. The locator marks the claim, using the MTRSC system in good faith. The corners are marked on the ground of the claim, in the event of a conflict. The system is approved by the commissioner.
- Adds: a valid MTRSC system location establishes rights to deposits within the section that are open to claim staking at the time of location.

[9:27:27 AM](#)

Mr. Hutchison looked at Slide 9, which showed a photograph of a State Mining Claim Location Certificate. He described the legal description of the claim as shown on the certificate, which showed a detailed computer sketch.

[9:28:07 AM](#)

Mr. Hutchison addressed Slide 10, "SECTIONS 4,5 DEAL WITH MINING CLAIMS":

- Section 5 - AS 38.05.195(d) - Changes in locations and amended notices.
- Eliminated unnecessary language and focused on a simple procedure outlined in AS 38.05.200. Notices can be amended at any time to correspond with the amended locations, if it does not interfere with the rights of others. If there was an error in the notice or certificate of location, an amended certificate of location shall be recorded in

the same manner and with the same effect as the original certificate.

[9:28:50 AM](#)

Mr. Hutchison advanced to Slide 11, "AFFIDAVIT OF ANNUAL LABOR," which showed an example of what the affidavit looked like. He explained that the affidavits sometimes contained handwritten notes describing annual labor. He described the various fields on the document.

[9:30:16 AM](#)

Senator Olson considered the labor affidavit and asked whether the form would be filled out by minors working a claim. He asked about protection through child labor laws.

Mr. Hutchison stated that the labor would be varied.

Senator Bishop stated there were some exemptions in the Department of Labor and Workforce Development, such as overtime rates. He offered to provide more information regarding the child labor topic after consulting with the department. He spoke to money spent on a claim, the labor, how annual labor was calculated.

[9:32:46 AM](#)

Senator Olson reiterated his concern about child labor issues, and how to ensure that miners could work with families without getting in trouble.

Senator Bishop deferred to the Department of Labor.

Co-Chair von Imhof discussed guidelines and limits around work on fishing boats. She thought there were common sense guidelines that could dictate child labor.

Senator Olson thought that the bureaucratic issues surrounding mining claims clearly already lacked common sense.

Co-Chair von Imhof thought the topic might be addressed by an invited testifier.

[9:34:43 AM](#)

Mr. Hutchison looked at Slide 12, "SECTIONS 6,7,8,9 DEAL WITH ANNUAL LABOR":

- Section 6 - AS 38.05.210(a) - Outlines clear guidelines for performance of annual labor - Performing annual labor means that the miner is working the ground and trying to produce.
- Added:
 - Annual labor performance may include adjacent federal/private mineral interests held in common.
 - May include adjacent mineral interests.
 - Expenditures may be made on or for the benefit of any one claim, leasehold location, etc.
 - Labor shall be performed at the following rates:
 - \$100 for each claim;
 - \$400 for each quarter section MTRSC claim
 - \$100 for each partial or whole 40 acres of each mining claim not established using the MTRSC system.
 - For not more than five consecutive years, the claim holder may make a cash payment instead of performing annual labor.

Mr. Hutchison reiterated that the intent of the changes in statute was to increase mining production in the state.

[9:36:18 AM](#)

Mr. Hutchison showed Slide 13, "SECTIONS 6,7,8,9 DEAL WITH ANNUAL LABOR":

Section 7 - AS 38.05.210(b) - Clarifies the information found in a statement of annual labor

- Added:
 - Individual signs the statement to certify that it is true and correct to the best of the individual's knowledge.
 - The statement must include:
 - The assessment work year
 - The name and land administration number assigned by the department
 - Every meridian, township, range, and section in which the mining claim is located
 - The recording district

- The total amount of work required
- A description of the labor performed
- The value of the labor performed (including excess labor value from previous year)
- The name and mailing address of the owner designated to receive notices

[9:36:40 AM](#)

Mr. Hutchison referenced Slide 14, "SECTIONS 6,7,8,9 DEAL WITH ANNUAL LABOR":

- Section 8 - AS 38.05.210(c) - Allows for statements of annual labor to be corrected at any time (before "invalid" declaration)
- Added:
 - The statement of annual labor, whether recorded before or after the effective date of this Act, may be corrected or amended before the 90-day cure period.
 - The corrected statement of annual labor shall be recorded like the original.
 - A corrected statement may not be applied against labor required to be done during a subsequent year.
 - A corrected statement shall be recorded in 90 days.
- Removed:
 - 2-year threshold has been removed. In other words: There had to be a correction within two-years.

[9:37:49 AM](#)

Mr. Hutchison turned to Slide 15, "SECTIONS 6,7,8,9 DEAL WITH ANNUAL LABOR":

- Section 9 - AS 38.05.210 - Added new subsections (e), (f), (g), (h), (i), (j), and (k)
- (e) - A single statement of annual labor may be recorded for the benefit of more than one mining claim.
- (f) - A timely recorded statement of annual labor is prima facia evidence of performance.
- (g) -The department shall not declare a mining claim invalid based on a deficiency in a statement of annual labor until 90 days after written notice.

- Certified mail
- May send additional copy sent via regular mail
- (h) - If person fails to correct in 90 days, the department may make a "invalid" declaration. No 3rd Party location or judicial action within those 90 days.
- (i) - A decision to declare a location invalid based on a deficiency in a statement of annual labor must be issued no later than five years after the date of the annual labor is recorded.
- (j) - Failure of a co-owner to contribute shall be treated in accordance with AS 38.05.215-AS 38.05.235.

Mr. Hutchison considered Slide 16, "AS 38.05.215-AS 38.05.235 -WHAT DO THOSE STATUTES SAY?":

- A non-contributing co-owner may be required to forfeit their interest to the other co-owner, after direct written notice or 90 days public notice in a local newspaper of record from the contributing co-owner.
- If a forfeiture occurs, within 120 days, the co-owner that claims forfeiture shall record in the recorder's office where the claim is located:
 - Copy of notice
 - Affidavit of service
 - Affidavit of co-owner
 - Must include that delinquent amount has not be rectified.
- If a lienholder on an unpatented mining claim, the lienholder may perform annual labor to prevent forfeiture.
- Notice must be sent to the address of owner.
- Lienholder work shall be reimbursed. Must be properly recorded 90 within completion.
- A lawsuit may be filed to enforce a lien after notice of the claim of lien.
- A lien for performance of annual labor must be done in good faith to protect interests.

[9:40:27 AM](#)

Mr. Hutchison discussed the slide.

[9:40:43 AM](#)

Senator Bishop interjected that the department did look at the affidavits every time a minor submitted for an application. He thought the bill would allow the miner to cure the issue and retain their ground.

[9:41:18 AM](#)

Mr. Hutchison displayed Slide 17, "SECTION 10 DEFINES "LABOR"":

- Section 10 -Labor includes:
- Work performed in good faith on a mining claim, leasehold location, or mining lease that is directly related to exploring for, developing, or producing minerals, including:
 - Excavating, tunneling, drilling, or clearing land
 - Constructing or maintaining roads, trails, and landing strips
 - Extracting or producing ore

[9:41:36 AM](#)

Mr. Hutchison highlighted Slide 18, " "LABOR" CONTINUED":

- Performing metallurgical analyses, environmental studies, economic feasibility studies, engineering, and permitting
- Constructing settling ponds, water supplies, and other utilities
- Providing worker housing
- Performing reclamation activities under a reclamation plan
- Transporting workers and equipment in the state to or from a mining site (not to exceed 50% of the total value of labor in the statement of annual labor for the assessment year)
- Conducting a geological or airborne survey by a qualified expert and verified by a detailed report that sets out:
 - The location of the survey
 - The nature, extent, and cost of the survey
 - The name, address, and professional background of the person conducting the work

[9:42:20 AM](#)

Mr. Hutchison looked at Slide 19, "SECTION 11 DEFINES ABANDONMENT":

Section 11 - AS 38.05.265(a) and (b) - Clarifies "abandonment" -

- (a) - Failure to perform labor or make improvements or make a payment in lieu of labor, timely record a certificate of location or statement of annual labor, timely pay annual rental, or timely pay any required production royalties constitutes abandonment.
- A locator may not relocate the claim until one year after abandonment.
- Removed:
- A statement of annual labor that does not accurately set out essential facts is void and has no effect.
- If an annual rental or a royalty payment is deficient but is otherwise timely paid, abandonment does not result if full payment is made within the period described in the deficiency notice from the department or 30 days after a final judgment establishing the amount due (if the deficiency amount due was contested).

Mr. Hutchison noted that if there was no labor, no rent, and no royalty payments then the claim could be abandoned. He pointed out the removal of the harsh penalty for a small typo.

[9:43:46 AM](#)

Mr. Hutchison addressed Slide 20, " SECTION 11 CONTINUED":

- (b) - Added "rents and royalties." The language now states that unless another person has located on the abandoned claim or leasehold location (or the area is closed to mineral location), a person may cure the failure to record or pay rents or royalties (that led to abandonment) by:
 - Properly recording the certificate of location or statement of annual labor;
 - Paying any required rental or royalties; and
 - Paying the penalty equal to the annual rent from the mining claim or leasehold location.

[9:44:03 AM](#)

Mr. Hutchison advanced to Slide 21, " SECTION 12 - AS 38.05.270 - TRANSFERS":

- Clarified that the evidence of the sale, lease, or other transfer of mining property or interest in mining property be recorded, but eliminated existing language which stated "OR SHALL BE APPROVED BY THE DIRECTOR IN COMPLIANCE WITH SUCH REGULATIONS AS THE COMMISSIONER MAY ADOPT].
- Why? The removed language was too vague. What "regulations?" Clarity and a "streamlined process" was sought for the miners.

[9:45:02 AM](#)

Mr. Hutchison looked at Slide 22, "SECTION 13 DEALS WITH RECOGNITION OF LOCATIONS":

- Section 13 - AS 38.05.275(a) - Ensures that mining on state selected land located on or after an active unpatented federal mining claim may be located only with recorded permission of the unpatented federal mining claim holder.

Mr. Hutchison stated the section of the bill was a clarification provision.

[9:45:34 AM](#)

Mr. Hutchison spoke to Slide 23, "SECTION 14 - AS 38.05.283 - DEPARTMENTAL REVIEW":

- DNR is not required to go back and unilaterally look through their files for "compliance issues."

Mr. Hutchison detailed that Section 14 was added in Senate Resources Committee and stressed that DNR was not required to go back through their files to search for requirement issues.

[9:45:58 AM](#)

Senator Wielechowski was concerned with Section 14 of the bill. He thought the section gave broad latitude to the department to ignore laws. He gave the example of the requirement in Section 3 that the department "shall" send notice but then Section 14 removed the requirement.

Mr. Hutchison thought Senator Wielechowski's instincts were correct. He elaborated that if a third party came forward - this would be a different scenario but left to its own devices the department was not required to look back through files without cause.

[9:47:38 AM](#)

Senator Wielechowski maintained his concern with the section. He thought the section could lead to harsh due process issues. He urged more thought on the section.

Mr. Hutchison thought the sponsor was open to clarifying language in the section.

Senator Bishop thought Senator Wielechowski was raising a good point. He explained that a claim application process was rigorous.

[9:49:01 AM](#)

Co-Chair von Imhof suggested Senator Wielechowski work with the bill sponsor and reference the relevant conversation in the Senate Resources Committee.

[9:49:20 AM](#)

Mr. Hutchison referenced Slide 24, "SECTIONS 15, 16, 17 DEAL WITH APPLICABILITY, THE TRANSITION PROCESS, AND THE EFFECTIVE DATE":

- Section 15 - Clarifies applicability
- Section 16 - Ensures a smooth transition process (for regulations).
- Section 17 - Immediate effective date.

Mr. Hutchison showed Slide 25, "Questions?"

Senator Bishop addressed Senator Olson's question about child labor under AS 23.10.330 He noted that child labor law has an exemption that allows a child to work for a company owned by the parent, when supervised by the parent, this applies to all businesses including mining claims.

[9:50:44 AM](#)

Co-Chair von Imhof solicited further comments or questions.

Senator Olson mentioned controversy surrounding the proposed Pebble Mine. He cited that most recently there was a graphite mine near Nome. He mentioned a company called the Rivers of Gold that was planning on mining on the Solomon River and in Golovin Bay. He asked what the bill would do to allay the concerns of the resident population of that area that the mining operation would not disrupt their way of life.

Senator Bishop thought there was quite a regulatory permitting process any mine had to go through. He mentioned the graphite deposit north of Nome, which had been slowed in its permitting process due to concerns voiced by the locals in that area. Residents had expressed concerns and now the department was doing due diligence with local tribes. He stated all the bill would protect smaller mines and ensure that capital flowed into the state.

Co-Chair von Imhof solicited further questions for the bill sponsor.

Co-Chair von Imhof asked if Senator Olson wanted to pursue the topic of child labor.

Senator Olson thought the cited statute had spoken to his concern.

[9:54:16 AM](#)

Ms. Monroe expressed that she had worked in a volunteer capacity with the Alaska Miners Association for several years. She said that the question of mineral tenure arose frequently in her practice. She thought there were many issues that were not addressed in law that the bill helped to clarify.

[9:55:35 AM](#)

GREG BEISCHER, ALASKA MINERS ASSOCIATION (via teleconference), spoke in support of the bill. He stated he was president and CEO of Millrock Resources Inc. He said that he hoped to discover a great treasure like the Greens Creek Mine. He said that international partners were invited to participate in mineral investment to find new mines in the future. He said that mineral titles were paramount to the work. He lamented that other countries did not always have titles. He opined that security of mineral

title was not clear in the state and that the bill would correct that issue. He provided some examples of the importance of clear mineral title to claims. He shared the ways that his company had lost their claims due to unclear mineral title.

[9:59:41 AM](#)

Mr. Beischer continued his remarks. He stressed that certainty of title was critical to mining work. He said that attracting capital to the state was difficult because investors were wary of the unclear claim ownership and mineral title. He encouraged passage of the legislation.

[10:02:00 AM](#)

DEANTHA CROCKET, EXECUTIVE DIRECTOR, ALASKA MINERS ASSOCIATION (via teleconference), testified in support of the bill. The association had been working with the Department of Natural Resources to refine the final language of the bill. The legislation was a product of several hours of working with all involved parties. She wanted to address Senator Olson's question about mail distribution. The 90 days was the timeframe settled on after extensive conversation about what was reasonable when considering all factors. She contended that miners should take some responsibility and have some accountability in making sure that their affairs were in order.

[10:05:23 AM](#)

Co-Chair von Imhof thanked the testifier for the information.

Ms. Crocket continued to address various questions from committee members. She related that care had been taken to not put additional burden on DNR and she reminded the committee that the department had suffered significant budget cuts over the previous years. She stressed that DNR should not be required to arbitrarily review every labor affidavit as they did not have the resources to so.

Co-Chair von Imhof thanked her for bringing the issue up, as Senator Wielechowski would work with the sponsor on the issue.

Ms. Crockett thanked the committee for taking up the issue in the legislation. She indicated that there was nothing in the bill that took up environmental issues.

[10:07:46 AM](#)

Co-Chair von Imhof OPENED Public Testimony.

[10:07:56 AM](#)

Co-Chair von Imhof CLOSED Public Testimony.

[10:08:05 AM](#)

Senator Bishop addressed the fiscal note with an OMB component number 3002. He pointed to the second page regarding the DGF fund request:

To implement this act DNR will need 2 additional Natural Resource Specialist I's to research deficiencies in qualifications of mining right holders and annual labor affidavits, review deficiency assertions, issue written notices, adjudicate whether cures to these deficiencies have been made, issue decisions including whether or not a mining rights are voided or invalidated.

As the bill will require DNR to adopt new regulations and assume additional obligations, DNR anticipates the bill will require the following expenditures.

Personnel Cost- \$148.7 total annually

Co-Chair von Imhof indicated that a person from DNR was available for questions. She would be setting the bill aside.

Co-Chair von Imhof reviewed the agenda for the following Monday meeting at 9:00 a.m.

SB 155 was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

[10:10:19 AM](#)

The meeting was adjourned at 10:10 a.m.