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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of waived 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

\*\*FISCAL NOTE(S) ATTACHED \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

4/19/88 DATE TURNED INTO OFFICE \_\_\_\_\_  
Mr. President:  
RESOURCES Committee considered SB 509

termination date, members, and reports of the Alaska Minerals Commission;  
efd

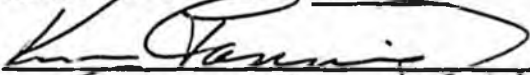


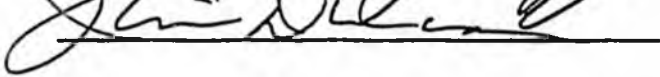
and recommended:

- replace with CS \_\_\_\_\_  same title
- attached amendment(s) and  new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_
- letter of intent adopted and attached

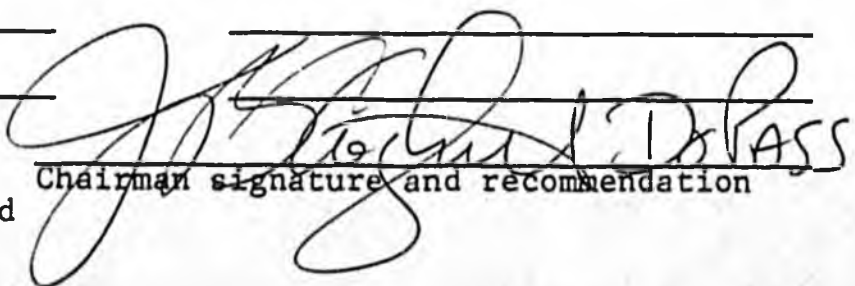
\*\* Committee  attached or  adopted fiscal note(s)  
~~zero~~ zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

  
  
  
  
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Chairman signature and recommendation

Committee Backup Attached



# Alaska State Legislature

## SENATE SPECIAL COMMITTEE ON OIL AND GAS

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN  
SENATOR JACK COGHILL  
SENATOR PAUL FISCHER

P.O. BOX V  
JUNEAU, AK 99811  
(907) 465-3834

### M E M O R A N D U M

TO: Senator Coghill, Chairman  
Senate Resources Committee

FROM: Senator Bettye Fahrenkamp, Chairman *BF*  
Senate Special Committee on Oil and Gas

RE: SB 509, An Act relating to the termination date,  
members and reports of the Alaska Minerals Commission;  
and providing for an effective date.

DATE: April 22, 1988

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Thank you for scheduling SB 509.

The Alaska Minerals Commission was established in 1986 to investigate some of the current problems experienced by the mining industry and make recommendations on ways to mitigate existing constraints on the development of minerals, including coal, in the state.

The Commission has issued two preliminary reports and is scheduled to make its final report at the beginning of the next legislative session. It will then terminate on February 1, 1989.

SB 509 would extend the Alaska Minerals Commission for an additional five years. More time is needed to continue to find solutions to the major impediments to responsible mineral resource development.

If legislation extending the Commission is not passed this session, it is not likely that there would be sufficient time at the beginning of next session to prevent its termination on February 1, 1989.

The legislation has the support of the Department of Natural Resources and the Department of Commerce and Economic Development. Funding for the operation of the Commission has not been included in the FY 89 budget. Passage of this bill would ensure that \$22,500 will be available to complete the final report.

Thank you for your consideration.

SB 509: "An Act relating to the termination date, members, and reports of the Alaska Minerals Commission; and providing for an effective date."

Background: The Minerals Commission was created by the 1986 Legislature and established in the Department of Commerce and Economic Development. Administrative support for the commission is provided by the Division of Business Development.

The commission was charged under statute to make recommendations to the Legislature and the Governor on ways to mitigate constraints on the development of minerals in the state. The commission has complied with that legislative mandate by drafting and submitting two reports to the Governor and the Legislature.

Many of the commission's legislative recommendations have been introduced in bills during the 1987 and 1988 legislative sessions and many of the commission's administrative recommendations have been the subject of review and adoption by state agencies. The legislative and administrative response to the commission's recommendations is strong evidence that the commission has taken its statutory directive seriously and responded effectively.

Alaska's mineral industry has begun a recovery and there is enormous potential for the emergence of a dramatically expanded and productive mining sector over the next five to ten years: a time when the state's economy critically needs growth in its nonpetroleum sectors. The advisory role of the Alaska Minerals Commission will continue to be valuable to the Legislature and the administration during this period.

Position: While the department has provided support through personal services, it is not capable of supporting travel and contractual services for commission members and staff. A Fiscal Note for \$22.5 for contractual and travel has been submitted. It is also noteworthy that the commission has been partially supported by the private sector as individual commission members and their companies have often funded travel and per diem of members.

The Department of Commerce and Economic Development feels the Minerals Commission has served the state well and supports SB 509 to extend the commission's time of service.

*Kathy Marshall for*  
\_\_\_\_\_  
J. Anthony Smith, Commissioner  
Department of Commerce and  
Economic Development

*4/22/88*  
\_\_\_\_\_  
Date

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
 Title: An act relating to the term- BRU: Business Development  
ination date, members & reports of the Alaska Minerals Commission.  
 Sponsor: Special Committee on Oil & Gas Components: \_\_\_\_\_  
 Requester: Special Committee on Oil & Gas

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		21.0	21.0	21.0	21.0	21.0
CONTRACTUAL		1.5	1.5	1.5	1.5	1.5
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		22.5	22.5	22.5	22.5	22.5

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
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FUNDING: (Thousands of dollars)

GENERAL FUND		22.5	22.5	22.5	22.5	22.5
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
TOTAL		22.5	22.5	22.5	22.5	22.5

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: Thves Shaub *Bonnie G. Borchick for LM.* Phone: 465-2094  
 Division: Business Development Date: 4/20/88

Approved by Commissioner: Anthony Smith Date: 4-21-88  
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

The Alaska Minerals Commission was created by the 14th Legislature with the mandate to make recommendations to the Governor and to the Legislature on ways to mitigate constraints on the development of the minerals in the State. Senate Bill 509 extends the life of the Minerals Commission from its current sunset date of February 1, 1989 to February 1, 1994.

The travel funds in this fiscal note will cover travel and per diem for the eleven member commission for the purpose of attending commission meetings. The contractual funds will cover the costs of phone, postage and printing of the annual report to the governor and legislature.

The first two reports of the Alaska Minerals Commission are attached.



# LAWS OF ALASKA

1986

Source

Chapter No.

CSSB 418(Res)

98

## AN ACT

Relating to the Alaska minerals commission; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

Approved by the Governor: June 6, 1986  
Actual Effective Date: June 7, 1986

AN ACT

Relating to the Alaska minerals commission; and providing for an effective date.

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\* Section 1. (a) The legislature finds that the minerals industries, including metallic minerals, industrial minerals, and hydrocarbons, have been traditionally and continue to be the major source of wealth and income in the state.

(b) The legislature further finds that there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restrictions on surface access, complex and numerous permitting requirements, a limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans.

\* Sec. 2. ALASKA MINERALS COMMISSION ESTABLISHED. (a) The Alaska Minerals Commission is established in the Department of Commerce and Economic Development.

(b) The commission is composed of 11 members. The commission shall be composed of individuals who have at least five years' experience in the various aspects of the minerals industries in the state. The governor shall appoint five members of the commission. The president of the Senate shall appoint three members of the commission. The speaker of the House of Representatives shall appoint three members of the commission.

(c) The commission shall make recommendations to the governor and to

Chapter 98

1 the legislature on ways to mitigate the constraints, including governmental  
2 constraints, on development of minerals, including coal, in the state.

3 (d) The commission shall make its preliminary recommendations to the  
4 governor and the legislature during the first 10 days of the First Regular  
5 Session of the Fifteenth Legislature and shall make its final report to the  
6 governor and the legislature during the first 10 days of the First Regular  
7 Session of the Sixteenth Legislature.

8 \* Sec. 3. This Act is repealed February 1, 1989.

9 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
10 10.070(c).

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Interim Report of the  
**Alaska Minerals Commission**

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**January 1988**

**Interim Report of the  
ALASKA MINERALS COMMISSION  
to  
Governor Steve Cowper  
and the  
Alaska Legislature**

**January 1988**

## FOREWORD

The Alaska Minerals Commission was created by the 14th Legislature through the enactment of Chapter 98 of the 1986 Session Laws of Alaska. The source of the Act was Senate Bill 418 (Appendix B) which was passed by the Legislature and signed into law on June 6, 1986.

The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate the constraints, including governmental constraints, on the development of minerals, including coal, in the state.

The Commission presented its initial report to the Governor and the Legislature in January 1987 at the outset of the first session of the 15th Legislature. The Commission is also charged with making a final report to the first session of the 16th Legislature in January 1989 after which the Commission will expire.

This interim report contains recommendations for the consideration of the Governor and the Legislature during the 1988 legislative session.

Commission members are appointed by the Governor, the President of the Senate and the Speaker of the House. The current members include representatives of the placer, hard rock and coal mining industries and come from diverse areas of the state. Administrative and staff support to the Commission is provided by the Division of Business Development, Department of Commerce and Economic Development.

I would like to thank all members of the Commission, staff and those members of the public who have provided their comments and worked on committees for their contributions in preparing this report. I would also like to thank Governor Cowper for the support his office has provided the Commission.

Earl H. Beistline  
Chairman

# ALASKA MINERALS COMMISSION

## Chairman

Earl Beistline  
Mining Consultant  
Fairbanks, Alaska

## Vice Chairman

Joseph E. Usibelli, Chairman  
Usibelli Coal Mine, Inc.  
Healy, Alaska

Del Ackels, Owner-Operator  
Goldust Mines  
Fairbanks, Alaska

Don Finney, Ketchikan Manager  
U.S. Borax and Chemical Corp.  
Ketchikan, Alaska

G.G. (Jerry) Booth  
Manager Alaska Operations  
Cominco Alaska, Inc.  
Anchorage, Alaska

Karl Hanneman, President  
Alaska Placer Development, Inc.  
Fairbanks, Alaska

Roger Burggraf, Chairman  
Fairbanks Branch  
Alaska Miners Association  
Fairbanks, Alaska

Jenny Hawley, Vice President  
Hawley Resource Group, Inc.  
Anchorage, Alaska

Joe Davis  
Mining Investment Corp.  
Tuscon, Arizona  
(Resigned, January 1988)

Peter Richardson  
Mgr. Project Administration  
Greens Creek Mining Company  
(Deceased, August 1987)

Ernest N. Wolff  
Mining Consultant  
Fairbanks, Alaska

## Staff

Thyes Shaub  
Division of Business Development  
Department of Commerce and  
Economic Development  
P.O. Box D  
Juneau, Alaska 99811

Charlie Green  
Division of Business Development  
Department of Commerce and  
Economic Development  
1001 Noble, Suite 420  
Fairbanks, Alaska 99701

Interim Report of the  
ALASKA MINERALS COMMISSION

January 1988

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## EXECUTIVE SUMMARY

In its initial report to the Governor and the Legislature in January 1987, the Alaska Minerals Commission made 39 recommendations for legislative and administrative actions that would mitigate constraints on the development of minerals. The Commission continues to support those recommendations as the basis for promoting the development of a viable long-term mining industry in the state.

This interim report focuses on some of the original recommendations and several new recommendations which are of the greatest urgency and which, if implemented, will provide the greatest benefits to the industry and to the state in the short-term by enhancing Alaska's business climate and by sending a signal to the international mining community that the state favors continued development of its mineral resources.

### Legislative Priorities

As its highest priority, the Commission urges the enactment of a mineral policy act that will provide a clear statutory policy supporting the responsible development of Alaska's mineral resources.

The Commission has also identified as priorities the need for passage of legislation in the following four areas:

- allowing flexible work week schedules;
- extending the number of hours underground miners may work at the face;
- amending the state's workmen's compensation laws; and
- supporting the inventory of sand and gravel resources.

### Administrative Priorities

The state must work to preserve the greatest amount of flexibility in the U.S. Corps of Engineers' implementation of wetlands permitting through the states certification of the Corps' proposed permitting program.

In the management of its lands, the Department of Natural Resources must emphasize multiple use rather than the present system which designates single or primary land uses and closes lands to mineral entry because of incompatibility perceived in the land planning process.

In the management of its waters, the state should pursue the introduction of increased flexibility in the six regulatory areas identified by the Alaska Miners Association/Department of Environmental Conservation Water Committee.

### Support for Mining Programs and Services

The Department of Education should budget for teacher training and the implementation of the mineral and energy resource educational kits to match private sector support through AMEREF.

The Division of Geological and Geophysical Surveys should be funded at a level sufficient to allow its existing professional staff to work on a full-time basis and to provide operating funds for field mapping and other essential services provided to the citizens of the state.

Additional recommendations have been made in the legislative, administrative, and mining program and service areas, and are included in the body of the report.

## INTRODUCTION

In its initial report to the Governor and Legislature in January 1987, the Alaska Minerals Commission made 39 recommendations for changes in administrative policies and for the enactment of legislation that would encourage and promote the growth of the mining industry in Alaska. During the intervening year, many positive actions have been taken.

The new administration of Governor Steve Cowper has taken many steps to support the state's existing industry and to promote new growth. During the legislative session, the administration supported enactment of a mineral policy act and several other key pieces of legislation addressing mining issues. On March 30, 1987, Governor Cowper issued a directive instructing state agencies to take progressive steps to resolve water quality issues impacting the placer mining industry.

The administration has demonstrated a new aggressiveness in several areas affecting the state's authority to manage its resources including negotiations with federal agencies on assertion of RS2477 rights-of-way on federal lands and intervention in legal challenges to the state's mining laws.

The administration has also made several important and positive decisions on specific mining projects including the issuance of two coal mine permits and the favorable resolution of the state's position on mine development plans for the U.S. Borax Quartz Hill project.

During the first session of the 15th Legislature, bills were introduced that addressed nearly all the legislative concerns of the Minerals Commission. While none of these bills have passed, the Commission expects that during the current legislative session, many of the Commission's recommendations will be signed into law.

Continued progress, both in legislative and administrative actions, will be critical to the future of Alaska's mineral industry. The international mining industry has begun to make a strong recovery as commodity prices have strengthened and provided renewed profitability to an industry hit hard by economic recession in the first half of the 1980's.

The mining industry has once again become aware of the enormous geologic potential for the discovery of commercial ore deposits in Alaska. The ongoing construction of the Greens Creek and Red Dog mines has served to focus world attention on Alaska as having potential for world class deposits. Actions to be taken by state government over the next year that demonstrate Alaska's desire to expand its mineral industry and to provide a reasonable, competitive climate for business, will do much to attract exploration and development investment in the short-term. In turn, the discovery and development of new mines will provide widespread economic benefits to the state over the long-term.

## RECOMMENDATIONS OF THE ALASKA MINERALS COMMISSION

### I. Legislative Priorities

Action on the following five recommendations for passage of needed legislation should be a priority of the 1988 Legislature.

#### Mineral Policy Act

- Many of the problems facing the mineral industry stem from the lack of a clear statutory policy supporting the responsible development of Alaska's mineral resources. The Commission members remain unanimous in their belief that the greatest immediate need is the enactment of a mineral policy act that will further the economic stability of the state through the development of Alaska's abundant metal, industrial mineral and coal resources.

#### Flexible Work Week

- The passage of legislation allowing work schedules to be set on the basis of project specific considerations will allow for more efficient use of labor and provide more desirable time off patterns for employees. This will be particularly significant for mines in remote locations with employees who reside in communities distant from the work site.

#### Work in Underground Mines

- Legislation is required to amend current statutes limiting shifts at the work face of underground mines from eight to ten hours. The antiquated statute presently in effect does not recognize the implementation of modern safety programs and penalizes mine efficiency and employee time off schedules on remote mining projects.

#### Workmen's Compensation

- Amendments to Alaska's worker's compensation laws are urgently needed to stem rapidly rising costs to Alaska businesses. Alaska mines compete in an international market place for the sale of their products and cannot pass on inflationary workmen's compensation costs to consumers.

#### Industrial Minerals Inventory

- The Legislature should enact SB 71 (or companion legislation HB 69), Senate Concurrent Resolution 4, and House Concurrent Resolution 5, addressing the need for systematic identification, inventory and reserve of sand and gravel resources by the state with particular emphasis on meeting the present and future needs of transportation systems, populated areas, and large scale developments within the state.

The Commission also recommends that the following actions be taken on a number of other issues before the Legislature during the 1988 session.

Legislation should be passed requiring agencies proposing regulations to estimate the economic impacts of those regulations including probable costs and benefits.

The Alaska Statutes should be amended to grant to department commissioners the power to waive any regulation when that regulation can be shown to be inappropriate for a particular operation or site specific situation.

Alaska Statute 38.05.300(a) should be amended to require legislative concurrence before areas greater than 640 acres can be closed to mineral entry.

The Commission recommends passage of Senate Bill 137, which requires the Department of Natural Resources to annually report on state lands closed to mineral entry.

The Commission does not recommend passage of proposed legislation which closes large acreages of state land to mineral entry (HB 93, Recreational Rivers; SB 55, Minto Flats State Game Refuge; SB 18, Anchorage Coastal Wildlife Refuge) and which ignores present regulatory flexibility to manage those lands and protect special resources and uses without making mineral closures.

The Commission recommends passage of Senate Bill 114 which will provide legislative oversight of Coastal Management Plans and which will ensure that uses of state concern are protected.

The Commission recommends passage of House Bill 212 or Senate Bill 280 which designates the Department of Natural Resources as lead agency for permitting of resource development projects. Furthermore, the agency should be granted authority for stream classification and habitat management.

The Commission recommends passage of Senate Bill 98 which prohibits the state from requiring water users to discharge water of higher quality than background levels.

## II. Administrative Priorities

Action by the Governor and the administration in the following three areas should be a priority for 1988.

### Wetlands Permitting

- The requirement, beginning in 1988, that placer mines receive "404" wetland permits from U.S. Army Corps of Engineers before conducting operations, poses the potential for shutting down the state's placer mining industry depending upon the degree of complexity and level of requirements imposed. The Governor should direct all state agencies to ensure that the maximum flexibility in the "404" permit is retained by certifying that the general permit and the abbreviated permit processes being proposed by the Corps are in concordance with State Water Quality and Coastal Zone Management programs.

### Multiple Use of Alaska Lands

- Restrictive land classifications and closures of lands to mineral entry because of perceived surface use conflicts are contradictory to professional land management practices and are detrimental to the economic well-being of the state. The Department of Natural Resources must return to a system of multiple use land management that uses existing authority and regulatory flexibility to manage state lands for the potential use of all its natural resources.

### Flexibility of Water Quality Regulations

- As recommended by the Alaska Miners Association/Department of Environmental Conservation Water Committee, the state should examine the use of mixing zones, the use of start-up variances, the reclassification of drainages, the restructuring of water uses, the revision of water quality criteria and the assumption of the NPDES program as potential areas where increased regulatory flexibility can be introduced into the state's water quality management while complying with the Clean Water Act and protecting downstream users.

The Commission also recommends that the Governor and administration continue to address recommendations in several other areas during 1988.

Actions of state agencies should continue to be guided by the progressive policies and instructions set out in the Governor's March 30, 1987 directive. The water quality regulation changes proposed on October 27, 1987 by the Department of Environmental Conservation addressing mixing zones and start-up variances do not meet the objectives of this directive. The Department of Environmental Conservation should continue to aggressively pursue a workable solution by maintaining communication with the industry.

The Department of Environmental Conservation should aggressively pursue the development of appropriate reclassification procedures and take action on specific streams for which reclassification requests have been submitted.

The state should continue to work toward assuming management of the National Pollutant Discharge Elimination System (NPDES) permit program.

State agencies issuing regulations and permits should base compliance upon attainment of performance standards, rather than requiring operators to use design and engineering specifications which often prove to be inefficient, costly and ineffective.

### III. Support for Mineral Programs and Services

The following two priority recommendations are made to both the Governor and the Legislature to ensure continuation of state programs and services critical to the future of the mining industry.

#### Mineral Resource Education

- The "Alaska Resources Kit: Minerals" is an established and effective educational program that was jointly developed and implemented by industry and the state. The Department of Education should formalize this ongoing cooperative effort by budgeting annually for support of teacher orientation, training, and distribution of educational materials in the schools, to match ongoing industry contributions by the Alaska Mineral and Energy Resource Education Fund (AMEREF) for the production of the teaching kits.

#### Division of Geological and Geophysical Surveys

- Geological mapping, geologic surveys, mineral assessments and the publication of geologic reports are critical to the state's ability to maintain and expand its mining industry as well as providing for the health and benefit of the residents of the state. The Division of Geological and Geophysical Surveys should be funded at a level sufficient to allow its existing professional staff to work on a full-time basis and to provide operating funds for the performance of field mapping projects and other essential services.

The Commission also recommends appropriate support be provided for as follows:

The basic level of services provided by the Division of Mining be supported, and budgetary increments be provided to reinstitute the coal leasing and prospecting program, and to support research for coal drying technology.

The mineral services and functions within the Department of Commerce and Economic Development, Division of Business Development, be supported and the division further be directed and supported to research and publish a report — in cooperation with the Department of Natural Resources and the Mineral Industry Research Laboratory of the School of Mineral Engineering — on potential export markets for Alaska industrial minerals and products and on the availability of industrial mineral resources in Alaska.

State programs for professional education and for vocational and technical training services should continue to be supported in order that the maximum number of Alaskans are eligible to fill and hold jobs in the mining industry.

## Appendix A.

### ALASKA MINERALS COMMISSION STATEMENT OF PURPOSE

The Alaska Minerals Commission was created by the 14th Legislature in Chapter 98 of the Session Laws of 1986 and was established to make recommendations to the Governor and to the Legislature on ways to mitigate constraints on the development of minerals in the State.

The minerals industry offers the greatest potential of any Alaska industry for expanding and diversifying the State's economic base; for increasing Statewide employment; and for generating new wealth to create businesses and provide revenues for State and local governments.

However, Alaska has a complex pattern of land ownership and management; has overlapping and uncertain regulatory requirements; has unique geographic, geologic and climatic conditions; and has an underdeveloped transportation system.

To attract the capital necessary for the exploration and development of new mines; to ensure that mines can be developed feasibly and in timely fashion; and to ensure that producing mines remain viable—constraints on the industry must be mitigated.

The Alaska Minerals Commission will prepare reports for the First and Second Sessions of the 15th Legislature, and the First Session of the 16th Legislature, recommending to the Governor and to the Legislature the adoption of legislation and the implementation of administrative policy that will best accomplish the statement of policy found in Article VIII, of the Constitution of Alaska:

"It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest."

and the statement of policy found in the President's National Materials and Minerals Report to Congress of April 5, 1982:

"It is the policy of this Administration to decrease America's mineral vulnerability by taking positive action that will promote our national security, help ensure a healthy and vigorous economy, create American jobs, and protect America's national resources and environment."

The goals of the recommendations of the Alaska Minerals Commission are to assure that the Legislature and the state administration encourage and promote development of a viable mining industry in the state.

## Appendix B.

Chapter 98  
Session Laws of Alaska, 1986  
(Senate Bill 418)

### AN ACT

Relating to the Alaska minerals commission; and providing for an effective date.

Section 1. (a) The legislature finds that the minerals industries, including metallic minerals, industrial minerals, and hydrocarbons, have been traditionally and continue to be the major source of wealth and income in the state.

(b) The legislature further finds that there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restrictions on surface access, complex and numerous permitting requirements, and limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans.

Sec. 2. ALASKA MINERALS COMMISSION ESTABLISHED. (a) The Alaska Minerals Commission is established in the Department of Commerce and Economic Development.

(b) The commission is composed of 11 members. The commission shall be composed of individuals who have at least five years' experience in the various aspects of the minerals industries in the state. The governor shall appoint five members of the commission. The President of the Senate shall appoint three members of the commission. The speaker of the House of Representatives shall appoint three members of the commission.

(c) The commission shall make recommendations to the governor and to the legislature on ways to mitigate the constraints, including governmental constraints, on development of minerals, including coal, in the state.

(d) The commission shall make its preliminary recommendations to the governor and the legislature during the first 10 days of the First Regular Session of the Fifteenth Legislature and shall make its final report to the governor and the legislature during the first 10 days of the First Regular Session of the Sixteenth Legislature.

Sec. 3. This Act is repealed February 1, 1989.

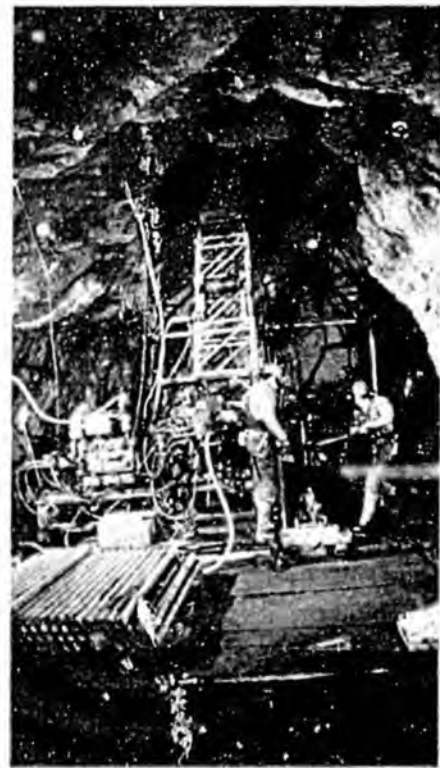
Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).



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Initial Report of the  
**Alaska Minerals Commission**

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January 1987

Initial Report of the  
ALASKA MINERALS COMMISSION  
to  
Governor Steve Cowper  
and the  
Alaska Legislature

January 1987

## FOREWORD

The Alaska Minerals Commission was created by the 14th Legislature through the enactment of Chapter 98 of the 1986 Session Laws of Alaska. The source of the Act was Senate Bill 418 (Appendix B) which was passed by the legislature and signed into law by Governor Bill Sheffield on June 6, 1986.

The enabling legislation instructs the Commission to make recommendations to the governor and legislature on ways to mitigate the constraints, including governmental constraints, on the development of minerals, including coal, in the state.

The Commission is charged with preparing an initial report to be presented to the governor and the legislature at the beginning of the 1987 legislative session and a final report to be presented to the 1989 legislative session, after which the Commission will expire. The Commission will also prepare an interim report for the 1988 legislative session.

Commission members are appointed by the Governor, the President of the Senate and the Speaker of the House. The current members include representatives of the placer, hard rock and coal mining industries and come from diverse areas of the state. Staff support to the Commission is provided by the Division of Minerals and Forest Products, Department of Commerce and Economic Development.

The inaugural meeting of the Commission was held in August 1986 and included the election of Earl Beistline, Chairman and Darrell Spilde, Vice Chairman. A Statement of Purpose was drafted (Appendix A) and committees were organized in the areas of land management, regulations, transportation, administrative policy and education.

Additional meetings were held in September, October, November and December of 1986 to prepare the Commission's initial report. Two meetings were held in Fairbanks and three were held in Anchorage. Meetings were preceded by public notice, and meeting agendas included public testimony. A mailing list of over 100 individuals, organizations and companies with interest in the minerals industry was prepared, and copies of meeting minutes and other business are sent to members on the mailing list.

In December 1986, Darrell Spilde resigned his seat due to work commitments, and Roger Burggraf was appointed by the President of the Senate, Don Bennett to fill the vacancy. Joe Usibelli was elected to succeed Darrell Spilde as Vice Chairman at the December meeting of the Commission.

Committees are chaired by Commission members and participants in committee meetings included representatives from miners' associations, mining companies, native corporations, government agencies, other resource industry associations and interested individuals.

The initial report of the Commission recommends as its priority the adoption of an Alaska Minerals Policy Act. Additional recommendations are proposed in the areas of land management; regulations and administrative policy; transportation and infrastructure; and the promotion of mineral development, education and technology.

One area which the Commission has not addressed in its initial report is the subject of mineral taxation, leasing and royalties. This subject is complex and while the Commission has not had sufficient time to review it, this area will be addressed in future reports.

The Commission will continue its work over the next two years, following up on the results of recommendations presented in this report and making additional recommendations in future reports.

I would like to thank all members of the Commission, the staff, and those members of the public who have provided their comments and worked on committees for their contributions in preparing this report.

Earl Beistline  
Chairman

## ALASKA MINERALS COMMISSION

### Members

Del Ackels, Owner-Operator  
GOLDUST MINES  
Fairbanks, Alaska

Earl Beistline  
Mining Consultant  
Fairbanks, Alaska

G. G. (Jerry) Booth, Mgr. Alaska Operations  
COMINCO ALASKA, INC.  
Anchorage, Alaska

Roger Burggraf, President  
ALASKA MINERS ASSOCIATION  
Fairbanks, Alaska  
(Appointed December 1986)

Joe Davis, Senior Manager  
INSPIRATION MINES, INC.  
Nome, Alaska

Don Finney, Ketchikan Manager  
U. S. BORAX AND CHEMICAL CORP.  
Ketchikan, Alaska

Karl Hanneman  
Mining Engineer  
Fairbanks, Alaska

Jenny Hawley, Vice President  
HAWLEY RESOURCE GROUP, INC.  
Anchorage, Alaska

Peter Richardson, Mgr. Project Admin.  
GREENS CREEK MINING COMPANY  
Juneau, Alaska

Darrell Spilde, Vice President  
NERCO MINERALS, INC.  
Fairbanks, Alaska  
(Resigned December 1986)

Joe Usibelli, President  
USIBELLI COAL MINE, INC.  
Healy, Alaska

Ernest N. Wolff  
Mining Consultant  
Fairbanks, Alaska

### Staff

Thyes Shaub, Director  
Div. of Minerals and Forest Products  
Department of Commerce and Economic  
Development  
P. O. Box D  
Juneau, Alaska 99811  
Phone: (907) 465-2094

Charlie Green  
Div. of Minerals and Forest Products  
Department of Commerce and Economic  
Development  
1001 Noble, Suite 420  
Fairbanks, Alaska 99701  
Phone: (907) 452-7464

Initial Report of the  
ALASKA MINERALS COMMISSION

January 1987

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## EXECUTIVE SUMMARY

The Alaska Minerals Commission was created by an act of the 14th Legislature and signed into law by Governor Sheffield. The Legislature directed the Commission to "make recommendations to the governor and the legislature on ways to mitigate the constraints, including governmental constraints, on the development of minerals, including coal, in the state."

As its priority, the Commission recommends legislative adoption of a minerals policy act which will guide all state actions affecting mineral development and which will provide the foundation for other recommended legislative and administrative actions.

The Commission has made additional recommendations in the areas of land management; regulations and administrative policy; transportation and infrastructure; and the promotion of mineral development, education and technology. The executive summary highlights those recommended actions that the Commission feels will have the most immediate and important benefits for the viability and the growth of Alaska's mineral industry.

**Alaska Minerals Policy Act** — Many of the problems facing the mineral industry stem from the lack of a clear, statutory policy supporting the responsible development of Alaska's mineral resources.

The Commission members are unanimous in their belief that the greatest immediate need is the passage of an enforceable mineral policy act during the next legislative session which will implement Article VIII, Section 1 of the Constitution of Alaska by encouraging the development of Alaska's resources by making them available for maximum use, by establishing that resource development is consistent with the public interest, and by directing that resource development is an economic priority of the state. (Recommendation 1; page 7)

**Multiple-Use of Alaska Lands** — The principle of "multiple-use" on Alaska lands has been abrogated to emphasize the primacy of recreational, habitat and aesthetic uses. The present legislative definition of "multiple-use" means management for more than one use but not necessarily for more than two uses. Therefore, mineral development, and other resource development, can and have been restricted or effectively prohibited on state "multiple-use" lands.

The legislature should amend Alaska Statute 38.05.300 to require legislative approval of the closure of more than 640 acres of state lands to mineral entry and should amend the various definitions of "multiple-use" to require the management of state lands for the use of all resources. (Recommendations 2-3; pages 8 & 9)

**Coastal Zone Management** — By approving coastal management programs that give local authorities total control of activities within their districts, the state is relinquishing its authority to manage and regulate resource development. State approved coastal management plans contain unwarranted extensions of coastal zone boundaries and subordinate uses of "State Concern and National Interest."

The legislature should require coastal zone boundaries to be redrawn as legislatively approved in 1979 and should require that all district management programs be subjected to legislative oversight as proposed in Senate Bill 185 of the 1986 legislative session. (Recommendations 10-11; pages 9 & 10)

**Lead Agency Authority for Permitting** — The management of the surface use of lands is statutorily vested in the Department of Natural Resources. However, other agencies have assumed overlapping authority or been given co-management authority. This has allowed agencies with other mandates to impose stipulations on surface activities and in the case of the Department of Fish and Game to develop a parallel surface management program for habitat.

The Department of Natural Resources should be designated lead agency for all surface management and granted final authority for the permitting of mineral resource development. (Recommendations 14-16; page 11)

**Water Quality** — Water treatment technology has not yet been developed that will allow placer miners to economically attain state quality standards for drinking water. Since virtually all waters of the state are classified for drinking water regardless of actual use, the entire industry is threatened by increased enforcement being mandated by the courts.

The legislature should amend Title 46 of the Alaska Statutes as proposed in House Bill 627 of the 1986 legislative session with changes proposed by the Commission, and the Governor should direct the Department of Environmental Conservation to: assume management of the federal N.P.D.E.S. water quality program; support economically achievable federal effluent limitations; implement a site-specific regulatory program; and pursue stream reclassification. (Recommendations 17-21; page 12)

**Costs and Benefits of Regulations** — Estimating the costs of proposed regulations and comparing them to the expected benefits is a prudent function of responsible government. Alaska mineral producers face higher costs inherent in doing business in Alaska. Unnecessary and excessive indirect costs due to unreasonable regulations reduces the competitiveness of Alaska businesses.

The Legislature should require agencies proposing regulations to analyze the costs and benefits of those regulations as proposed in House Bill 458 of the 1986 legislative session. (Recommendation 23; page 13)

**Wage and Hour Laws** — Alaska's present wage and hour laws do not allow employers the same degree of flexibility as permitted under federal law. Remote mining projects using rotational work crews that must commute long distances would benefit from the use of irregular or flexible work weeks as permitted under federal law.

The Legislature should amend Alaska's laws to incorporate the flexibility allowed in federal wage and hour provisions. (Recommendation 28; page 14)

**Transportation and Infrastructure** — The lack of an established transportation system and associated infrastructure is a primary impediment to resource development in Alaska. Of far-reaching concern, is the ability of the state to gain access rights to develop transportation and infrastructure corridors.

The Governor should re-affirm Alaska's rights of access as provided under Revised Statute 2477, assert several pivotal rights-of-way vital for future access to remote mineralized areas, and adopt and implement a statewide transportation and infrastructure plan. (Recommendations 29-30; page 15)

**Support for Mining Services in State Government** — Alaska's economic future depends upon the development of its natural resources. In order to have a viable mineral industry, the state must demonstrate that it is an advocate of mining and reverse Alaska's poor reputation with the domestic and international mining industry.

The state's advocacy and promotional functions for mineral development should be strengthened and retained within the Department of Commerce and Economic Development; the regulatory and managerial functions within the Department of Natural Resources must be supported to assure the necessary operation of Alaska's mining laws and regulations; and the state geological survey should be supported to carry out a field program of geologic mapping, mineral assessments and the timely publication of its reports. (Recommendations 31, 34; page 16)

**Technology Transfer** — The state would realize large benefits from allocating a fraction of present expenditures for existing enforcement, research and grant programs by providing field assistance to placer miners in the implementation of innovative and new technologies that reduce environmental impacts of placer mines.

The Legislature should direct that the University of Alaska Mining Extension Program be broadened to include an experienced placer mining engineer to assist placer miners in the field with site-specific water quality, reclamation, mineral beneficiation and gold recovery problems. (Recommendation 36, page 17)

## INTRODUCTION

Alaska is entering a period of economic change. Those sectors of the economy supported directly by oil production or indirectly by pass-through spending of government revenues will be severely impacted.

Mining is one sector of the economy that is not directly affected by the loss of state revenue or by a decrease in oil related activities as it does not appreciably depend on the level of funding in state capital or operating budgets.

While economic changes have depressed the oil industry in Alaska, there have been several economic changes favorable to the mining industry. Increased metal prices, lower fuel and labor costs, and lower interest rates should be working favorably for the growth of the mining industry in Alaska.

Yet, economic information for 1986 indicates that all is not well. The placer mining industry suffered a 27 percent decrease in the number of mines, a loss of 390 jobs statewide and a 16 percent decrease in gold production. In contrast, placer gold production in the Yukon Territory is expected to set a new record in 1986.

Exploration activities in Alaska remained at their lowest level in some 15 years, down nearly 50 percent from 1981 levels. In contrast, exploration in British Columbia increased some 30 percent in 1986 to a level 10 times greater than in Alaska.

While there are many factors that contribute to the lowered level of mineral activity in Alaska, the comparison with activity in the Yukon Territory and British Columbia—areas which share similar geology, climates and costs—indicates that there are fundamental impediments and constraints to conducting exploration and mining in Alaska.

Comments from individuals in the industry are revealing. Questionnaires are annually mailed to miners for use in preparing an annual mineral industry report jointly published by the Department of Commerce and Economic Development and the Department of Natural Resources. The comments which follow are excerpts from the responses to those questionnaires.

The following two comments are from questionnaires returned by managers of exploration programs.

"I now confine most of my exploration activities to the southwestern U.S. where it is more economic and not as difficult to deal with the environmental regulations. Alaska is a wonderful place to try to develop mines but the economics and constantly more difficult environmental restrictions are almost too enormous to overcome. I hope this changes in the future. Somehow this message needs transmitting to those who can effectuate a change for the better. As I recommended the last four years, the only way to effectuate change for the better is to withdraw investment in exploration in Alaska. As you may realize, that was a very difficult thing for me to do. I hope in the future it will change."

"The problem is the lack of a clearly defined policy by governmental agencies toward mining activities. This uncertain environment makes us hesitate or abandon possible projects."

The following comment is from an Alaska Native Corporation.

"We have an extremely difficult time attracting joint venture partners from the minerals industry to finance development. Alaska has an extremely poor reputation with the minerals industry. Most companies prefer to invest their money elsewhere."

The following two comments are from placer miners.

"(The problems include) water quality regulations which are not practical and too costly to comply with. Lack of understanding of the placer industry by people in the regulatory agencies. There are new people all the time. Because of the uncertainty of getting revised standards for water quality regulations which would be practical and economically attainable, we cannot justify capital expenditures for modernizing our equipment. We are unable to implement long term mining plans."

"Without doubt, the main problem is the clean water regulations which for some operations are impossible to meet. I have not mined on my claims now for two years. I have been waiting for a reason to return if that ever happens."

The 14th Legislature, in the enabling legislation that created the Alaska Minerals Commission, cited many of the problems currently facing the industry.

"... there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restrictions on surface access, complex and numerous permitting requirements, a limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans."

Prior to World War II, Alaska enjoyed an international reputation for its placer and hard rock mining industries. Mining was primarily responsible for the construction of Alaska's highway and railroad systems, the founding of many of its modern communities including Fairbanks, Nome and Juneau, and the well being of much of Alaska's economy.

While the mining industry will never replace the bonanza revenues generated by oil production, it can provide thousands of new jobs, increase the tax base, reduce pass through payments and other economic benefits which will contribute to the increased diversity and stability of Alaska's economy.

This report sets out the preliminary findings of the Alaska Minerals Commission and proposes recommendations that will allow Alaska's mineral industry to grow and reestablish its economic importance to Alaska.

## RECOMMENDATIONS OF THE ALASKA MINERALS COMMISSION

### I. ALASKA MINERALS POLICY ACT

**FINDINGS:** Many of the problems facing the mineral industry stem from the lack of a clear, statutory policy supporting the responsible development of Alaska's mineral resources. The Commission members are unanimous in their belief that the greatest immediate need is the passage of a mineral policy act during the next legislative session which will implement Article VIII, Section 1 of the Constitution of Alaska by encouraging the development of Alaska's resources by making them available for maximum use, by establishing that resource development is consistent with the public interest, and by directing that resource development is an economic priority of the state. Such a policy act will become the foundation for other legislative and administrative actions recommended in this report.

The effectiveness of an act that sets policy depends entirely upon its implementation. To assure that the policies presented here will become active and enforceable policies of the state, a section enumerating the rights of citizens to take legal action has been incorporated. This section is modeled after the rights granted citizens under the federal Clean Water Act.

#### THE COMMISSION RECOMMENDS THAT:

1. The LEGISLATURE enact an Alaska Mineral Policy Act by amending Title 44, Article 99 of the Alaska Statutes with the addition of the following sections:

Section 44.99.200 DECLARATION OF STATE MINERAL POLICY. In conformance with Article VIII, Section 1 of the Constitution of Alaska, and to further the goals of the state economic development policy to maintain a sound economy, stable employment and to encourage responsible economic development in the state for the benefit of present and future generations through the purposeful development of the state's abundant mineral resources including metals, industrial minerals, and coal; it is the policy of this state:

- (1) that Alaska's lands be available for mineral exploration and development through multiple-use practices that shall not subordinate mineral resource development;
- (2) that mineral development not be encumbered by excessive, unreasonable or uneconomical legislative or administrative actions;
- (3) that a comprehensive system of transportation and infrastructure be developed in Alaska that allows mineral products from the state to enter the market place;
- (4) that the general and public functions of the state which promote mineral development, which inform and educate the people, and which advance the knowledge and technology of the mineral industry be supported.

Section 44.99.205 ENFORCEMENT. (a) Any citizen may commence a civil action on his or her own behalf against any person (including (i) the State of Alaska, (ii) any other governmental instrumentality or agency, and (iii) any government employee or officer acting in his or her official capacity) when there is alleged a failure of such person to carry out any policy under this act.

(b) The court, in issuing any final order in any action brought pursuant to this litigation, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

## II. LAND MANAGEMENT

### A. Multiple-Use

**FINDINGS:** The amount of land in Alaska that will ever be used for mining is very small (less than three-tenths of one percent of the land area of the United States has been disturbed by mining since 1776). Yet the majority of Alaska lands have been withdrawn from mineral entry. In 1968, only 53 million acres (14%) were closed to mineral entry. In 1986, 234 million acres (62%) of Alaska's lands have been closed to mineral entry.

Over 80% of all federal land in Alaska is closed, much of it having been withdrawn by ANILCA and subsequent federal land management plans. In recent years the implementation of regional state land-use plans and the legislative creation of state parks or other special use areas have resulted in the present closure of 8% of state owned lands.

Additionally, complex, overlapping and restrictive land management policies as well as on-going lawsuits cloud the rights of the holders of mining claims or leases, and discourage further investment in the development of Alaska's mineral resources.

On state lands not closed to mining, the principle of multiple-use management has been abrogated to emphasize the primacy of recreational, habitat and aesthetic uses. At present, the legislature has defined "multiple-use" to mean management for more than one use but not necessarily more than two uses. Therefore, the designation of wildlife habitat and scenic values as primary land uses satisfies the state's interpretation of "multiple-use" management though it results in the restriction or prohibition of mining.

This practice subordinates the use of mineral resources and discourages the development and extraction of mineral resources. For example, in the Nelchina Public Use Area (which is designated as a multiple-use area) exploration, development and extraction of subsurface resources is allowed only if found to be compatible with the primary uses of wildlife habitat and recreation. While state lands classified for such uses are technically open for mineral entry, the risk that the development and extraction of minerals will be restricted is sufficient to discourage investment on these lands, further reducing the effective land base in Alaska available for mineral use.

Before the state disposes of its resources, whether through leases or sales, the Department of Natural Resources must make a determination that the action will serve the best interests of the state. The benefits of economic development have not always been adequately addressed in making best interest determinations.

### THE COMMISSION RECOMMENDS THAT:

2. The Legislature amend Alaska Statute 38.05.300 as follows:

Classification of lands. (a) The commissioner shall, where considered necessary and proper, classify land for surface use. This section does not prevent reclassification of land, where the public interest warrants reclassification, nor does it preclude multiple use of land whenever different uses are compatible. State land, water, or land and water area may not, except by act of the state legislature, be closed to multiple use or to mineral entry if the area involved contains more than 640 acres.

3. The Legislature redefine, to conform with constitutional intent, the various definitions of "multiple use" in the Alaska Statutes to require the management of state lands for the use of all resources rather than allocating or selectively denying resource use;
4. The Legislature make closures of land to mineral entry only where documented and demonstrated incompatible use is proven and only when preceded by a mineral assessment;
5. The Legislature and Governor periodically review lands closed to mineral entry to assess the need for continued closure and, if there is no longer a compelling need for closure, return the land to multiple-use designation;
6. The Governor require state planning agencies to encourage the use of all resources on its lands rather than designating single or primary uses and require that only when a documented and demonstrated incompatible use is proven should there be any restrictions on the use of any resource;
7. The Governor direct the Commissioner of the Department of Natural Resources to review state lands presently classified other than Resource Management Lands and reclassify most of the state's lands as Resource Management Lands as per 11 AAC 55.200 to be managed for multiple-use;
8. The Governor make clear to the U.S. Congress and Federal Administration that further restrictions or withdrawals of federal land from multiple-use designation are not acceptable and assure that regulations enacted to implement the provisions of the Alaska National Interest Lands Conservation Act protect the "prior existing rights and exemptions" allowed in that act;
9. The Governor establish that mineral development is a priority in the best interest of the state that must be recognized in all state land management actions requiring a "Best Interest Finding".

#### B. Coastal Zone Management

FINDINGS: Coastal Zone Management programs have exceeded the intent of the law and are being challenged by the federal government. The programs include unwarranted extensions of boundaries far beyond a reasonable definition of coastal areas (in some cases hundreds of miles inland); have designated subsistence and fisheries as primary uses, subordinating all other uses even when they are "Uses of State Concern and National Interest"; and have included absolute prohibitions on certain activities. The approval of these programs by the Alaska Coastal Policy Council constitutes the relinquishment by the state of its authority to manage and regulate resource development.

Additionally, the making of "consistency determinations" within the Office of the Governor, Division of Governmental Coordination has added a new layer of government to the permitting process for projects in the coastal zone. Not only has this removed authority from those agencies already vested to manage Alaska's lands, but has increased the likelihood that the permitting process be subject to political pressures rather than solely technical considerations.

#### THE COMMISSION RECOMMENDS THAT:

10. The Legislature affirm coastal zone boundaries as originally defined by biophysical areas in 1978 by the Alaska Department of Fish and Game and approved by the legislature in 1979;

11. The Legislature reintroduce and pass legislation requiring legislative oversight of district management programs as originally stated in the Alaska Coastal Management Program and set forth in Senate Bill 185 as written during 1986 session (Appendix C);

12. The Governor re-assert that mining, oil and gas development and other resource development are "Uses of State Concern" and, as such, cannot be unduly restricted by local coastal zone programs;

13. The Governor establish lead agency authority for permit processing under the Department of Natural Resources and revoke Administrative Order 78 in order to return Coastal Zone Management consistency determinations to the resource agencies.

### III. REGULATIONS AND ADMINISTRATIVE POLICY

#### A. Lead Agency Authority for Permitting

**FINDINGS:** Currently it is common practice for an agency that has statutory authority for the issuance of a permit to accept for addition to an applicant's permit any stipulations or requirements proposed by other agencies which have either limited or no statutory authority. As a result permits are issued with conditions that are unnecessary, unreasonable, uneconomical, and excessive.

#### THE COMMISSION RECOMMENDS THAT:

14. The Legislature direct the Department of Natural Resources to assume lead agency authority for the permitting of mineral resource development projects; mandate the Department to protect the rights to explore for and develop mineral resources on Alaska lands; and grant the Department final authority to determine the relevance, appropriateness and need to include permit stipulations, conditions and requirements proposed by other agencies;

15. The Legislature not diminish the statutory authority of the Department of Natural Resources in the management of Alaska's lands by granting co-management status to or by requiring concurrence of other agencies;

16. The Governor transfer all state mineral-related regulatory functions to the Department of Natural Resources, grant the Department sole responsibility for the promulgation and enforcement of environmental and operational regulations affecting the mining industry, and grant the Department, as the statutory manager of surface and subsurface lands of the State of Alaska, the responsibility for the management of habitat.

#### B. Water Quality Management

**FINDINGS:** One of the principal causes for the decline of the placer mining industry is the inability of the industry to attain drinking water standards in mine discharge water. In the early 1970's, virtually all waters of the state were classified for all uses including drinking water. Water users, such as miners, are required to meet standards for the highest classified use of the receiving waters. Since virtually all Alaska waters include drinking water as a use, miners are required to meet standards designed for drinking water.

Of particular concern is the turbidity standard which indirectly measures the amount of solids suspended (not easily settled) in the water. The most noticeable effect of turbidity is aesthetic. The more turbid the water, the less clear it is. Of the various water quality criteria affected by placer mining, such as settleable solids and toxic substances, turbidity is the criteria with the least impact.

Yet the turbidity standard is the most stringent and the most difficult to attain. The turbidity of receiving waters classified for drinking water use cannot be increased greater than 5 NTU's above background levels. The increment of 5 NTU's is so small as to be indistinguishable to the human eye.

Yet, the individual miner risks fines of up to \$10,000 per day for exceeding the turbidity or other standards.

While the water quality regulations have been in effect for many years (but have been largely unenforced), recent court actions have now mandated enforcement.

At present, water treatment technology has not been developed that will allow the placer miner to economically attain the turbidity standard for drinking water. Several recent research projects have demonstrated techniques that can significantly reduce the amount suspended sediment causing turbidity in mine effluent water, but for most sites these new methods will not attain current standards. Despite the implementation of these new methods and investment in necessary equipment, the placer miner will not be assured of continued operation. In order to establish the stability necessary for the industry to invest in improved mining methods, the regulations must incorporate standards with attainable thresholds.

#### THE COMMISSION RECOMMENDS THAT:

17. The Legislature amend Title 46 of the Alaska Statutes as set forth in HB 627 of the 1986 legislative session (Appendix D) with changes proposed by the Commission to Section 46.03.892 of that bill as follows:

Sec. 46.03.892 REGULATION OF DISCHARGED WATER. (a) is amended to read:

When considering the quality of discharge of water and establishing regulations for the quality of discharge of water, the commissioner may require a person who discharges water to meet a discharge standard that is compatible with the immediate downstream appropriated use. Except where the immediate downstream appropriated use is drinking water, the quality standards of the discharged water will reflect a range of values which are technically and economically attainable and which are satisfactory for other downstream uses. The range of said values cannot be more restrictive than federal standards.

18. The Governor support only those effluent limitations that are economically achievable for the size-class of the operation to which they apply and, when the state submits written comments on the proposed National Effluent Guidelines for placer mining due to be published in March 1987, support only those technologies where benefits exceed costs;

19. The Governor direct the Department of Environmental Conservation to assume the Federal National Pollutant Discharge Elimination System (NPDES) program;

20. The Governor direct the implementation of a site-specific program for the regulation of water quality on mining operations to include temporary permit modifications, compliance schedules for start-up operations, and the use of a mixing zone (in time as well as volume) extending to the point of the next higher current use;

21. The Governor direct the Department of Environmental Conservation to actively pursue stream reclassification, to continue as a test case the reclassification procedures for the Tolovana River using field-data collected in 1986 for this purpose, and to develop and implement a new classification other than "industrial" which recognizes that turbidity does not have sufficient negative long term impact to warrant eradication of Alaska's placer mining industry;

22. The Governor require that policy decisions affecting water quality regulations be based upon the findings of completed research and proven technology.

### C. Costs and Benefits of Regulations

FINDINGS: Alaska mineral producers often face higher costs due to a harsher climate, higher labor costs, higher capital costs for transportation and infrastructure, and other reasons. To remain competitive, unjustified or unnecessary indirect costs must not be allowed to price Alaska producers out of the market place. Estimating the costs of proposed regulations and comparing them to the expected benefits is a prudent function of responsible government.

#### THE COMMISSION RECOMMENDS THAT:

23. The Legislature require agencies proposing regulations to describe the effects of the proposed regulations including the economic impacts, the probable costs and benefits and other analyses as set forth in HB 458 of the 1986 Legislative Session (Appendix E).

### D. Use of Performance Standards

FINDINGS: Regulations for the mining industry often require that certain performance standards be attained as well as require that specific designs be used to achieve attainment. For example, coal mining regulations set minimum quality levels for discharge water (performance standards) and specify the use of settling ponds (design standard) to achieve them. This does not allow operators to satisfy performance standards in alternate ways, and stifles innovations that may reduce costs. Furthermore, if required design standards are insufficient to achieve performance standards, the operator is placed in a situation of double jeopardy.

Laws and regulations should require specific design standards only for reasons of public health and safety. In all other situations, the operator should have the discretion to use the design best suited to attain the performance standard in the most effective and efficient way.

#### THE COMMISSION RECOMMENDS THAT:

24. The Legislature require that regulations and permits be based upon reasonable performance standards rather than design and engineering specifications.

### E. Duplication of Regulatory Authority

FINDINGS: The administrative branch of state government has become a complex bureaucracy with multiple agencies vying for regulatory management of mineral development.

#### THE COMMISSION RECOMMENDS THAT:

25. The Governor review the statutory authority, administrative regulations, and current orders, actions, procedures of all agencies and take such measures and actions necessary to eliminate overlapping regulatory authority and duplication of permitting requirements.

#### F. Waiver of Inappropriate Regulations

FINDINGS: Situations occur where regulations, mandated for all classes of operations, may be clearly inappropriate or inapplicable for a specific operation or situation. In these cases, there is no discretionary authority granted state agencies to waive the requirements.

#### THE COMMISSION RECOMMENDS THAT:

26. The Legislature amend the Alaska Statutes to grant to department commissioners the power to waive any regulation when that regulation can be shown to be inappropriate for a particular operation or site-specific situation.

#### G. Qualifications of Administrative Personnel

FINDINGS: Many positions within state government which affect mining activities have been filled with personnel with little or no background in mining, engineering, geology, business or other technical or professional training necessary to understand and resolve the issues they are charged to carry out.

#### THE COMMISSION RECOMMENDS THAT:

27. The Governor require that only persons with training and experience in mining be appointed to the position of Director of the Division of Mining, and that other personnel within the Department of Natural Resources working in positions affecting the mineral industry have the technical expertise necessary to assure competence in the performance of their duties and have professional qualifications commensurate with their responsibilities.

#### H. Wage and Hour Laws

FINDINGS: Alaska's present wage and hour laws do not contain the flexibility permitted under federal law. For example, the use of a four-day work week with ten-hour shifts is not allowed without paying overtime. Alaska mining projects such as Red Dog, Greens Creek and Quartz Hill and other future mines will be remote from the residences of their employees requiring the use of longer hour work days to make the most efficient use of rotational work crews commuting long distances. The present wage and hour laws will greatly increase labor costs for remote projects, decreasing their competitiveness.

#### THE COMMISSION RECOMMENDS THAT:

28. The Legislature amend Alaska's Wage and Hour laws as proposed (Appendix F) to permit the use of irregular or flexible work weeks as permitted by federal law.

#### IV. TRANSPORTATION AND INFRASTRUCTURE

**FINDINGS:** The lack of an established transportation system and associated infrastructure is a primary impediment to mineral development in Alaska. While there have been many discoveries of world class deposits made in Alaska over the last two decades, lack of access has delayed or will indefinitely postpone their development.

Revised Statute 2477 (RS 2477), a federal law passed in 1866, grants rights-of-way for highways over public lands not otherwise reserved for public uses. In 1961, the Alaska Supreme Court established parameters for what constitutes a valid RS 2477 right-of-way under Alaska law. RS 2477 was repealed in 1976 by the Federal Land Policy and Management Act (FLPMA), but Congress re-affirmed in the act all RS 2477 rights existing prior to 1976.

#### THE COMMISSION RECOMMENDS THAT:

29. The Governor re-affirm Alaska's rights of access as provided by RS 2477; assert several pivotal rights-of-way which are vital for access to Alaska's remote mineralized areas; advise the Secretary of the Interior that the state desires to work with all interested federal agencies regarding the establishment of any new federal guidelines on the processing of RS 2477 assertions; and direct that the state's draft document of November 6, 1985 entitled "RS 2477 Policies and Procedures" be finalized and published;

30. The Governor adopt and implement a statewide infrastructure and transportation plan which includes the identification and development of access corridors within the state.

## V. PROMOTION OF MINERAL DEVELOPMENT, MINERAL EDUCATION AND TECHNOLOGY

### A. Promotion and Advocacy for Mineral Development

FINDINGS: Alaska's future depends on the development of its natural resources and the state must encourage a positive attitude towards responsible development. The economic benefits of resource development must be represented within state government, and there must be an advocacy office for the promotion of mineral development. Agencies with regulatory duties cannot objectively assume the full role for advocacy.

#### THE COMMISSION RECOMMENDS THAT:

31. The Legislature strengthen and retain in the Department of Commerce and Economic Development the advocacy functions performed by the Division of Minerals and Forest Products and support the managerial and regulatory functions performed by the Division of Mining in the Department of Natural Resources necessary for the efficient operation of the mining laws and regulations of Alaska;
32. The Governor establish regular cabinet meetings for the purpose of encouraging mineral development, attracting mining investment to the state, and resolving mineral development issues;
33. The Governor direct the Department of Natural Resources to more strongly emphasize the economic benefits of resource development in its policies and actions.

### B. Geologic Surveys

FINDINGS: The functions performed by the state geological survey are fundamental to the development and maintenance of the mining industry, and the performance of mineral assessments of lands proposed for mineral closure is an essential function of the survey.

At present, less than 10% of Alaska has been geologically mapped in sufficient detail to be useful for mineral exploration. Geologic mapping of mineralized terranes, and other surveys performed by qualified geological professionals provide the basic information on which mineral exploration programs are designed. An effective geologic survey must be maintained or industry's ability to effectively explore for minerals in Alaska will continue to be diminished and the state's sincerity to encourage mineral development will be in question.

#### THE COMMISSION RECOMMENDS THAT:

34. The Legislature support the state geological survey to maintain a staff of qualified personnel to carry out a field program of geologic mapping and other surveys, to perform mineral assessments on lands proposed for mineral closure, and to publish reports in timely fashion;
35. The Governor direct the state geological survey to adopt as its priorities geologic mapping and other surveys, the performance of mineral assessments on lands proposed for mineral closure, and the timely publication of completed reports, surveys and maps.

### C. Technology Transfer

**FINDINGS:** In past years, the state has spent millions of dollars on research projects, grants and increased enforcement programs. For a fractional expenditure, the state would benefit enormously by providing training and on-site assistance in the application of innovative or new technologies which enhance the operational efficiencies and environmental impacts of their mines. To be effective, such assistance should not be provided by agencies or personnel responsible for regulatory activities.

#### THE COMMISSION RECOMMENDS THAT:

36. The LEGISLATURE enact a resolution (Appendix G) directing that the function of the University of Alaska Mining Extension program be broadened to include a field presence by an experienced placer mining engineer to assist placer miners with site-specific water quality, mineral beneficiation, gold recovery and reclamation problems.

### D. Professional and Technical Training

**FINDINGS:** The education of mining engineering and geology professionals, and the vocational and technical training of Alaska residents for positions in mining and mineral exploration is beneficial to the industry and assures that resident hire is maximized. Many of the jobs in mining projects will be available to rural residents of the state and the availability of training is essential to assure local employment.

#### THE COMMISSION RECOMMENDS THAT:

37. The Governor maintain the University of Alaska-Fairbanks School of Mineral Engineering:

38. The GOVERNOR maintain the vocational and technical training services currently provided to Alaska's mineral industry.

### E. Education

**FINDINGS:** The "Alaska Resource Kit: Minerals", which is being used in the statewide public school system, is an excellent program for educating Alaska's students in the issues and fundamentals of resource development. The program is a cooperative effort between the Department of Education which developed the curriculum and is responsible for its implementation, and the Alaska Minerals and Energy Resource Education Fund (AMEREF), an industry supported organization which funds the production, revision and replacement of the teaching materials.

#### THE COMMISSION RECOMMENDS THAT:

39. The Governor establish a formal position for mining and resource education within the Department of Education and provide program support for the continued dissemination and implementation of the "Alaska Resource Kit: Minerals" curriculum.

## APPENDICES

- A. Alaska Minerals Commission: Statement of Purpose
- B. Chapter 98, Session Laws of Alaska, 1986 (Senate Bill 418)
- C. Senate Bill 185, 1986 Legislative Session
- D. House Bill 627, 1986 Legislative Session
- E. House Bill 458, 1986 Legislative Session
- F. Wage and Hour Bill Proposed for 1987 Legislative Session
- G. University of Alaska, Mining Extension Program

## Appendix A.

### ALASKA MINERALS COMMISSION STATEMENT OF PURPOSE

The Alaska Minerals Commission was created by the 14th Legislature in Chapter 98 of the Session Laws of 1986 and was established to make recommendations to the Governor and to the Legislature on ways to mitigate constraints on the development of minerals in the State.

The minerals industry offers the greatest potential of any Alaska industry for expanding and diversifying the State's economic base; for increasing Statewide employment; and for generating new wealth to create businesses and provide revenues for State and local governments.

However, Alaska has a complex pattern of land ownership and management; has overlapping and uncertain regulatory requirements; has unique geographic, geologic and climatic conditions; and has an underdeveloped transportation system.

To attract the capital necessary for the exploration and development of new mines; to ensure that mines can be developed feasibly and in timely fashion; and to ensure that producing mines remain viable—constraints on the industry must be mitigated.

The Alaska Minerals Commission will prepare reports for the First and Second Sessions of the 15th Legislature, and the First Session of the 16th Legislature, recommending to the Governor and to the Legislature the adoption of legislation and the implementation of administrative policy that will best accomplish the statement of policy found in Article VIII, of the Constitution of Alaska:

"It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest."

and the statement of policy found in the President's National Materials and Minerals Report to Congress of April 5, 1982:

"It is the policy of this Administration to decrease America's mineral vulnerability by taking positive action that will promote our national security, help ensure a healthy and vigorous economy, create American jobs, and protect America's national resources and environment."

The goals of the recommendations of the Alaska Minerals Commission are to assure that the Legislature and the state administration encourage and promote development of a viable mining industry in the state.

## Appendix B.

Chapter 98  
Session Laws of Alaska, 1986  
(Senate Bill 418)

### AN ACT

Relating to the Alaska minerals commission; and providing for an effective date.

Section 1. (a) The legislature finds that the minerals industries, including metallic minerals, industrial minerals, and hydrocarbons, have been traditionally and continue to be the major source of wealth and income in the state.

(b) The legislature further finds that there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restrictions on surface access, complex and numerous permitting requirements, a limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans.

Sec. 2. **ALASKA MINERALS COMMISSION ESTABLISHED.** (a) The Alaska Minerals Commission is established in the Department of Commerce and Economic Development.

(b) The commission is composed of 11 members. The commission shall be composed of individuals who have at least five years' experience in the various aspects of the minerals industries in the state. The governor shall appoint five members of the commission. The speaker of the House of Representatives shall appoint three members of the commission.

(c) The commission shall make recommendations to the governor and to the legislature on ways to mitigate the constraints, including governmental constraints, on development of minerals, including coal, in the state.

(d) The commission shall make its preliminary recommendations to the governor and the legislature during the first 10 days of the First Regular Session of the Fifteenth Legislature and shall make its final report to the governor and the legislature during the first 10 days of the First Regular Session of the Sixteenth Legislature.

Sec. 3. This Act is repealed February 1, 1989.


Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

# AUTHENTICATION

The following officers of the Legislature certify that the attached enrolled bill, Committee Substitute for Senate Bill No. 418 (Resources)

\_\_\_\_\_, consisting of  
2 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

Passed by the Senate May 5, 1986

  
\_\_\_\_\_  
President of the Senate

ATTEST:

  
\_\_\_\_\_  
Secretary of the Senate

Passed by the House May 11, 1986

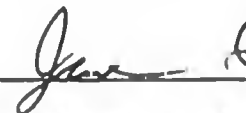
  
\_\_\_\_\_  
Speaker of the House

ATTEST:

  
\_\_\_\_\_  
Chief Clerk of the House

## ACTION BY GOVERNOR

Approved by the Governor

 19 86

  
\_\_\_\_\_  
Governor of Alaska

## Appendix C

Introduced: 2/21/85  
Referred: Resources

BY FAHRENKAMP, HALFORD, FAIKS,  
ZIEGLER, KERTTULA AND P.FISCHER

1 IN THE SENATE

2

SENATE BILL NO. 185

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to legislative disapproval of the  
7 Alaska Coastal Management Program."

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

9 \* Section 1. AS 46.40.080 is amended to read:

10 Sec. 46.40.080. EFFECTIVE DATE OF ALASKA COASTAL MANAGEMENT  
11 PROGRAM. The Alaska coastal management program adopted by the coun-  
12 cil, and any additions, revisions, or amendments of the program, shall  
13 be submitted to the legislature. The program or changes take effect  
14 60 days after they are submitted unless disapproved by act of the  
15 legislature [UPON ADOPTION OF A CONCURRENT RESOLUTION BY A MAJORITY OF  
16 THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE OR BY A VOTE OF THE  
17 MAJORITY OF THE MEMBERS OF EACH HOUSE AT THE TIME THE HOUSES ARE  
18 CONVENED IN JOINT SESSION TO CONFIRM EXECUTIVE APPOINTMENTS SUBMITTED  
19 BY THE GOVERNOR].

20 \* Sec. 2. AS 46.40.090(a) is amended to read:

21 (a) A district coastal management program [APPROVED BY THE  
22 COUNCIL AND THE LEGISLATURE] for a coastal resource district that  
23 [WHICH] does not have and exercise zoning or other controls on the use  
24 of resources within the coastal area shall be implemented by appropri-  
25 ate state agencies. Implementation shall be in accordance with the  
26 comprehensive use plan or the statement of needs, policies, objectives  
27 and standards adopted by the district.

## Appendix D

Offered: 5/1/88  
Referred: Rules

Original sponsor: M.W. Miller by request

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 627 (Resources) am S  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to the appropriation of water."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

8 \* Section 1. AS 16.05.030 is amended by adding a new subsection to  
9 read:

10 (b) The commissioner may not require a higher discharge quality  
11 for appropriated water used in placer mining than the quality of water  
12 received for the use.

13 \* Sec. 2. AS 18.05.020 is amended by adding a new subsection to read:

14 (c) The commissioner may not require a higher discharge quality  
15 for appropriated water used in placer mining than the quality of water  
16 received for the use.

17 \* Sec. 3. AS 46.03 is amended by adding a new section to read:

18 Sec. 46.03.192. REGULATION OF APPROPRIATED WATER (a) When  
19 considering the quality of appropriated water and establishing regu-  
20 lations for the quality of appropriated water, the commissioner may  
21 require a person who appropriates water to meet a standard that is  
22 equal but not higher than a standard attainable through the applica-  
23 tion of best practicable and economically sustainable technology  
24 associated with the particular use.

25 (b) The commissioner may not require a higher discharge quality  
26 standard for appropriated water than the quality of water received for  
27 use.

28 \* Sec. 4. AS 46.15 is amended by adding a new section to read:

29 Sec. 46.15.045. SMALL SCALE USE OF WATER A person may use less

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1 than a significant amount of water without a permit unless the commis-  
2 sioner determines under AS 46.15.080(b) that the use of less than a  
3 significant amount of water without a permit is not in the public  
4 interest. A person using less than a significant amount of water  
5 without a permit acquires no water right or priority unless an appli-  
6 cation is filed and a permit or certificate is issued under AS 46.15.  
7 030 - 46.15.185.

8 \* Sec. 5. AS 46.15.131(f) is amended to read:

9 (f) The commissioner may, by regulation, designate additional  
10 types of appropriations that [WHICH] are exempt from this section and  
11 provide simplified procedures for ruling on the applications.

12 \* Sec. 6. AS 46.15.133 is amended by adding a new subsection to read:

13 (g) An application to appropriate not more than 1,000 gallons of  
14 water a day is exempt from the notice provisions of this section  
15 except that the commissioner shall notify the Department of Fish and  
16 Game of each application to appropriate water from a stream designated  
17 under AS 16.05.870. Notwithstanding this subsection, the commissioner  
18 may require public notice under this section.

19 (1) on a determination that the total amount of water  
20 available in an area is limited considering the number of potential  
21 users from the source of the water; or

22 (2) on request of the municipality in which the area is  
23 located.

24 \* Sec. 7. AS 46.15.260 is amended to read:

25 Sec. 46.15.260. DEFINITIONS. In this chapter, unless the con-  
26 text otherwise requires,

27 (1) "appropriate" means

28 (A) to divert, seepound, or withdraw a quantity of  
29 water from a source of water, for a beneficial use; or

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12

1 (D) to reserve water under [IN ACCORDANCE WITH]  
2 AS 46.15.143;

3 (2) "appropriation" means

4 (A) the diversion, impounding, or withdrawal of a  
5 quantity of water from a source of water for a beneficial use; or

6 (B) the reservation of water under [IN ACCORDANCE  
7 WITH] AS 46.15.143;

8 (3) "beneficial use" means a use of water for the benefit  
9 of the appropriator, other persons or the public, that is reasonable  
10 and consistent with the public interest, including, but not limited  
11 to, domestic, agricultural, irrigation, industrial, manufacturing,  
12 fish and shellfish processing, navigation and transportation, mining,  
13 power, public, sanitary, fish and wildlife, recreational uses, and  
14 maintenance of water quality;

15 (4) "source of water" means a substantial quantity of water  
16 capable of being put to beneficial use;

17 (5) "water" means all water of the state, surface and  
18 subsurface, occurring in a natural state, except mineral and medicinal  
19 water,

20 (6) "commissioner" means the commissioner of natural re-  
21 sources;

22 (7) "director" means the director of [and and water manage-  
23 ment [THE DIVISION OF LANDS], Department of Natural Resources;

24 (8) "person" includes an individual, partnership, asso-  
25 ciation, public or private corporation, state agency, municipality  
26 [POLITICAL SUBDIVISION] of the state, and the United States, [.]

27 (9) "mineral and medicinal water" means

28 (A) water of a hot spring or spring with curative  
29 properties that [WHICH] has been reserved by the Federal

1 government under Public Land Order No. 399, and

2 (B) geothermal fluid, as [THE TERM IS] defined in  
3 AS 41.06.050;

4 (10) "significant amount of water" means

5 (A) a use of more than 5,000 gallons of water in a  
6 single day from a single source, or

7 (B) the regular daily or recurring seasonal use of  
8 more than 500 gallons of water a day for 10 days or more a year  
9 from a single source; or

10 (C) a water use that may adversely affect the water  
11 rights of another appropriator or the public interest.

12 \* Sec B AS 16.05.050(b), AS 18.05.020(c), and AS 46.03.892 are re-  
13 pealed on the date the state assumes responsibility for the pollutant dis-  
14 charge elimination program authorized by sec. 402 of the Act of June 30,  
15 1948. 33 U.S.C. 1342

# Appendix E

Offered: 4/1/88  
Referred: Judiciary

Original sponsors: Pignalberi, Cato,  
Marrou, et al

1 IN THE HOUSE BE THE STATE AFFAIRS COMMITTEE  
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 458 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled "An Act relating to the adoption of regulations, and  
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

9 " Section 1 AS 44 62 190 is amended by adding a new subsection to  
10 read:

11 (d) An agency may not adopt, amend, or repeal a regulation if  
12 more than one year has elapsed since the first publication of notice  
13 of proposed action under this section. When more than one year has  
14 elapsed, an agency may revive the proposed action by republication in  
15 accordance with (a) of this section.

16 " Sec. 2 AS 44 62 is amended by adding a new section to read:

17 Sec. 44 62 197 REGULATORY ANALYSIS (a) An agency shall issue  
18 a regulatory analysis of a proposed regulation if, within 70 days  
19 after publishing the notice of proposed action, a written request is  
20 submitted to the agency by a legislator, another agency, a political  
21 subdivision of the state, the governor, as authorized by a vote of the  
22 Administrative Regulation Review Committee, or by 50 persons signing a  
23 single request.

24 (b) Upon receipt of a request under (a) of this section, the  
25 agency shall prepare the regulatory analysis. The analysis must  
26 quantify the data to the extent practicable, take into account both  
27 short term and long term consequences, and

28 (1) describe the classes of persons who probably will be  
29 directly affected by the proposed action, including the classes who

1 will bear the costs of the proposed regulation and the classes who  
2 will benefit;

3 (2) describe the probable quantitative and qualitative  
4 effect of the proposed regulation, economic or otherwise, on the  
5 classes of persons affected;

6 (3) set out the probable cost to the agency and any other  
7 agency for implementing and enforcing the proposed regulation and the  
8 anticipated effect on state revenue;

9 (4) compare the probable cost and benefits of the proposed  
10 regulation with the probable cost and benefits of inaction;

11 (5) determine whether there are less costly or less intrusive  
12 methods for achieving the purpose of the proposed regulation.

13 (c) The person or persons requesting the regulatory analysis  
14 may, by express statement in the request, waive one or more of the  
15 requirements of (b) of this section.

16 (d) A concise summary of the regulatory analysis shall be published  
17 in the administrative journal at least 10 days before the  
18 earliest of

19 (1) the end of the period for making written comments on  
20 the proposed regulation, or

21 (2) the end of the period during which an oral public  
22 proceeding may be requested.

23 (e) The published summary must indicate where to obtain copies  
24 of the full text of the analysis and when, where, and how persons may  
25 comment on the proposed regulation.

26 (f) If an agency has made a good faith effort to comply with the  
27 requirements of (a) - (c) of this section, the regulation may not be  
28 invalidated on the ground that the contents of the regulatory analysis  
29 are insufficient or inaccurate.

1 \* Sec. 3. AS 44 62 200(a) is amended to read:

2 (a) The notice of proposed adoption, amendment, or repeal of a  
3 regulation shall include

4 (1) a statement of the time, place, and nature of proceed-  
5 ings for adoption, amendment, or repeal of the regulation.

6 (2) reference to the authority under which the regulation  
7 is proposed and a reference to the particular code section or other  
8 provisions of law which are being implemented, interpreted, or made  
9 specific.

10 (3) an informative summary of the proposed subject of  
11 agency action, including a summary of the initial justification of  
12 need.

13 (4) other matters prescribed by a statute applicable to  
14 the specific agency or to the specific regulation or class of regu-  
15 lations.

16 (5) a summary of the fiscal information required [TO BE  
17 REPEALED] under AS 44 62 195

18 Sec. 4. AS 44 62 is amended by adding a new section to read:

19 Sec. 44 62 205 JUSTIFICATIONS OF NEED (a) When a state  
20 agency files a notice of proposed action under AS 44 62 190, the  
21 agency shall make available to the public an initial justification of  
22 need for the proposed action. The initial justification shall

23 (1) describe the problem, condition, or circumstance the  
24 regulation is intended to address.

25 (2) specify the purpose of the regulation and the factual  
26 basis for the agency's determination that the regulation is reasonably  
27 necessary to carry out the purpose.

28 (3) identify documents upon which the agency is relying in  
29 proposing the action, and

1 (4) describe practical and reasonable alternatives to the  
2 proposed action.

3 (b) When a state agency submits a regulation or order of repeal  
4 for filing with the lieutenant governor under AS 44.62.040, the agency  
5 shall make available to the public a final justification of need con-  
6 cerning the regulation or order of repeal. The final justification  
7 shall include

8 (1) the complete text of a regulation that is adopted or  
9 amended and a list of regulations repealed.

10 (2) a summary of the comments and objections received and  
11 an explanation of changes made to the proposed regulation in response  
12 to the information or the reasons for rejecting the comments or ob-  
13 jections; and

14 (3) the reasons for rejecting proposed alternatives.

15 \* Sec. 5. AS 44 62 210 is amended by adding a new subsection to read:

16 (c) If at least 15 interested persons submit a written request  
17 for a public hearing at least 10 days before the end of the initial  
18 comment period, a state agency shall promptly schedule a public hear-  
19 ing on the proposed action. The agency may extend the comment period  
20 if necessary to provide at least 14 days' notice of the public hear-  
21 ing.

22 \* Sec. 6. AS 44 62 230 is amended to read:

23 Sec. 44 62 230 PROCEDURE ON PETITION Upon receipt of a  
24 petition requesting the adoption, amendment, or repeal of a regulation  
25 under AS 44 62 180 - 44 62 290, a state agency shall, within 30 days,  
26 deny the petition in writing, including the reasons for the denial, or  
27 schedule the matter for public hearing under AS 44 62 190 - 44 62 210.  
28 However, if the petition is for an emergency regulation [.] and the  
29 agency finds that an emergency exists, the requirements of

1 AS 44 62 190 44 62 210 do not apply, and the agency may submit the  
2 regulation to the lieutenant governor immediately after making the  
3 finding of emergency and putting the regulation into proper form

4 \* Sec. 7. AS 44 62 is amended by adding a new section to read:

5 Sec. 44 62 275. RECORDS OF PROPOSED ACTIONS. (a) A state  
6 agency shall maintain a file of the proceedings concerning the adop-  
7 tion, amendment, or repeal of a regulation. The file shall include

8 (1) petitions received under AS 44.62.220;

9 (2) published notices of proposed action under AS 44 62  
10 190;

11 (3) justifications of need required by AS 44 62 205;

12 (4) fiscal information under AS 44 62 195;

13 (5) a regulatory analysis, if required under AS 44 62 197;

14 (6) each document submitted in connection with the proposed  
15 action;

16 (7) each document upon which the agency is relying for the  
17 proposed action;

18 (8) a transcript, recording, or minutes of each public  
19 hearing connected with the proposed action; and

20 (9) other information that the state agency is required by  
21 law to consider or prepare in connection with the proposed action.

22 (b) The agency shall maintain a log that identifies each item  
23 contained in the file and the date on which the item was received.  
24 The file shall include an affidavit by the employee responsible for  
25 maintaining the file stating that the file contains all of the docu-  
26 ments required by this section and the date the file was completed.

27 (c) The file is a public record.

28 \* Sec. 8 AS 44 62 300 is amended to read:

29 Sec. 44 62 300 COURT REVIEW. An interested person may get a

1 judicial declaration on the validity of a regulation by bringing an  
2 action for declaratory relief in the superior court. In addition to  
3 any other ground the court may declare the regulation invalid

4 (1) for a substantial failure to comply with AS 44.62.010 -  
5 44 62 120, [ . OR]

6 (2) in the case of an emergency regulation or order of  
7 repeal, upon the ground that the facts recited in the "statement do not  
8 constitute an emergency under AS 44.62.250;

9 (3) for failure to comply with AS 44.62.205; or

10 (4) if the justification of need fails to present  
11 sufficient facts to establish by a preponderance of the evidence the  
12 need for the regulation.

13 \* Sec. 9. AS 44 62 640(a) is amended by adding a new paragraph to read:

14 (3) "document" means a written or electronic communication  
15 of any kind, except a telephone communication, considered by an agency  
16 during the adoption, amendment, or repeal of a regulation.

17 \* Sec. 10. AS 44 62 190 as enacted by sec. 1 of this Act, AS 44 62 -  
18 205(b) as enacted by sec. 4 of this Act, and the amendments made by secs. 3  
19 and 9 of this Act apply to proposed regulations, amendments, and orders of  
20 repeal that have not been submitted to the lieutenant governor for filing  
21 before the effective date of this Act. The amendment made by sec. 6 of  
22 this Act applies to petitions that have not been scheduled for public  
23 hearing or denied before the effective date of this Act.

24 \* Sec. 11. The amendments made by secs. 2, 3, 7, and 8 of this Act, and  
25 AS 44 62 205(a) enacted by sec. 4 of this Act do not apply to proposed  
26 regulations, amendments, or orders of repeal for which a notice of proposed  
27 action has been published before the effective date of this Act.

28 \* Sec. 12. This Act takes effect July 1, 1986.

## Appendix F

Introduced:

Referred: Labor & Commerce

1 IN THE BY  
2  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For An Act entitled: "An Act relating to payment of overtime and a good  
7 faith exception to damages for unpaid overtime, unpaid  
8 minimum wages, and liquidated damages; and providing  
9 for an effective date."

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

11 • Section 1. AS 23.10.060 is amended by adding a new paragraph to read:  
12 (19) work performed under a pay plan approved under AS  
13 23.10.062.

14 • Section 2. AC 23.10 is amended by adding a new section to read:

15 Sec. 23.10.062. IRREGULAR AND FLEXIBLE WORK HOUR PLANS. (a)

16 The department may approve a pay plan that provides fixed rates of pay  
17 for irregular or flexible work hours as provided in this section. The  
18 department shall review a proposed plan or proposed changes to a plan  
19 already approved. A plan or change to an approved plan is not valid  
20 until it receives written approval from the department.

21 (b) The department may approve a plan if the plan is entered into  
22 under an agreement as part of a collective bargaining contract or in  
23 accordance with (c) of this section and if the plan is

24 (1) a flexible work hour plan that provides for a 40-hour  
25 work week and not more than a 10-hour work day; and that requires the  
26 employer to pay compensation at a rate of one and one-half times the  
27 regular rate of pay for work over 40 hours per week or 10 hours per  
28 day;

29 (2) an irregular work hour plan that provides a fixed

1 weekly wage for irregular weekly hours not to exceed 60 hours in a  
2 work week and that requires the employer to pay compensation at a rate  
3 of one and one-half times the regular rate of pay for work over 60  
4 hours per week; the department may not approve a plan under this  
5 paragraph unless it finds that

6 (a) the nature of the employer's business and the duties of  
7 the employee require irregular hours of work that will average 40  
8 hours per week over an extended length of employment;  
9 and

10 (b) neither the employer nor the employee is able to  
11 control or anticipate with certainty the number of hours of work;

12 (3) a flexible work week plan that provides a fixed weekly wage  
13 for no more than 60 hours of work per work week and that requires the  
14 employer to pay compensation at a rate of one-half times the effective  
15 hourly rate of pay for hours in excess of 40 but less than 60 hours  
16 per week; the effective hourly rate of pay is determined by dividing  
17 the fixed weekly wage by the actual hours worked in a work week, not  
18 exceeding 60 hours; hours worked in excess of 60 hours per work week  
19 are paid at one and one-half times the effective hourly rate of pay  
20 for a 60-hour work week at the fixed weekly wage; the department may  
21 not approve a plan under this paragraph unless it finds that the  
22 nature of the employer's business and the duties of the employee  
23 require irregular hours of work that will average 40 hours per week  
24 over an extended length of employment.

25 (c) An employer and an employee shall enter a signed written  
26 agreement at the time of hiring establishing the day and place of  
27 payment, and the rate of pay for a work plan under this section.  
28 These items may not be changed unless the change is agreed to no later  
29 than the pay day before the time of change.

- 1     \* Sec. 3. AS 23.10 is amended by adding a new section to read:  
2             Sec. 23.10.112. GOOD FAITH EXCEPTION. In an action to recover  
3     unpaid minimum wages, unpaid overtime compensation, or liquidated  
4     damages under AS 23.10.050 - 23.10.150, if the employer shows to the  
5     satisfaction of the court that the act or omission giving rise to the  
6     action was in good faith and that the employer had reasonable grounds  
7     for the act or omission, the court may refuse to award liquidated  
8     damages or may award an amount less than the amount established in AS  
9     23.10.110.
- 10    \* Sec. 4. This Act applies to payment of wages for work performed after  
11    the effective date of this Act.
- 12    \* Sec. 5. AS 23.10.060(17) and 23.10.060(18) are repealed.
- 13    \* Sec. 6. This Act takes effect immediately in accordance with AS  
14    01.10.070(c)

## Appendix G.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA

WHEREAS the University of Alaska School of Mineral Engineering, Mineral Industry Research Laboratory and Mining Extension Program have a history of distinguished service as a leader in scientific and technical research and education related to the mining industry; and

WHEREAS the placer mining industry is currently faced with a strenuous challenge to develop economically feasible methods of gold recovery and wastewater management to comply with the stringent standards of water quality, including the turbidity standard, demanded by current state and federal regulations; and

WHEREAS the placer mining industry contributes as much as \$127,000,000, including economic multipliers into the Alaskan economy; and

WHEREAS the Alaska legislature appropriated \$3,000,000 through Senate Bill 461 for the purpose of furthering innovative research into fine gold recovery and wastewater treatment techniques that could help the industry improve its mining techniques; and

WHEREAS this innovative grants program has demonstrated some encouraging techniques that have the potential for widespread application to the industry; and

WHEREAS there exists a significant need for technology transfer to educate the industry on the use of these encouraging techniques; and

WHEREAS this technology transfer would be most productive if conducted in a positive, cooperative atmosphere, rather than under regulatory duress; and

WHEREAS the economic and environmental well being of the state would be enhanced should this technology transfer succeed;

BE IT RESOLVED by the Alaska State Legislature that the University of Alaska Mining Extension Program develop a Technical Assistance Program to provide a 9 month position with a 4 month field presence by an engineer qualified by Alaskan placer mining experience and a degree in Mining Engineering or Mineral Processing to provide on-site, site-specific technology transfer to the placer industry; and

BE IT FURTHER RESOLVED that a total of \$55,000 be appropriated to the University of Alaska Mining Extension Program to support the Technical Assistance Program for the first year.

