

S B

L R 9

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 28, 1989

FURTHER REFERRALS:

Date of Committee Action: 5/3/89

The FINANCE Committee considered:

CSSB 129 (FINANCE)

CS FOR SENATE BILL NO. 129 (Finance)

[MINING LEASES, CLAIMS, RENT & ROYALTIES]

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

RECOMMENDATIONS:

- be replaced with CS SB 129 (Fin.) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) Sen. 4/22/89 DNR
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Ronald J. [Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>			<input checked="" type="checkbox"/>

[Signature]
 Chairman's Signature
Ronald J. [Signature]

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION : CSSB 129 (Finance)

PUBLISH DATE : 4/22/89

FISCAL NOTE

REQUEST:

Revision Date: 20-Apr-89 Agency Affected: Natural Resources
 Title: An Act relating to rent and BRU: Mining Management
royalty payments for mining claims. Management/Administration
 Sponsor: Senate Rules Components: Mining Management
 Requestor: Governor Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		35.9	37.0	38.2	39.4	40.8
TRAVEL		0.0	0.0	0.0	0.0	0.0
CONTRACTUAL		1.5	1.5	1.5	1.5	1.5
SUPPLIES		0.5	0.5	0.5	0.5	0.5
EQUIPMENT		4.0				
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	41.9	39.0	40.2	41.4	42.8
CAPITAL		240.0	0.0	0.0	0.0	0.0
REVENUE		750.0	750.0	770.0	770.0	800.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		281.9	39.0	40.2	41.4	42.8
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	281.9	39.0	40.2	41.4	42.8

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Gerald Gallagher Phone: 762-2165
 Division: Mining Management Date: 20-Apr-89
 Approved by Commissioner: Lennie Gorsuch Date: 20-Apr-89
 Agency: Department of Natural Resources

Distribution (by preparer) :
 Legislative Finance 4/21/89
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

*This replaces previous DNR - F&S
 + Aotkin's com. doc*

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SENATE BILL NO. 129 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mining; and providing for an
7 effective date."

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

9 * Section 1. AS 38.05.205(c) is amended to read:

10 (c) A mining lease shall be for any period up to 55 years, and
11 is renewable if requirements for the lease remain satisfied. Annual
12 rental and production royalties shall be paid as required under
13 AS 38.05.211 and 38.05.212 [THE LESSEE HAS A RIGHT TO A NEW LEASE AT
14 THE END OF EACH LEASE PERIOD. THE COMMISSIONER MAY MAKE REASONABLE
15 ADJUSTMENTS OF THE RENTAL RATE AT THE END OF EACH 20 YEAR PERIOD,
16 BASED UPON CHANGED CONDITIONS IN PRODUCTION COSTS AND MARKETS]. A
17 valid mining claim located and held under AS 38.05.195 may be con-
18 verted to a lease at any time upon application by the owner, and
19 issuance by the commissioner. Rights [NO RIGHTS] granted by a mining
20 lease may not be exercised until the lease has been filed for record
21 in the recording district where the land is located.

22 * Sec. 2. AS 38.05.210(a) is amended to read:

23 (a) Labor shall be performed or improvements made annually on or
24 for the benefit or development of each mining claim, leasehold lo-
25 cation, and mining lease on state land except that where adjacent
26 claims, leasehold locations, or mining leases are held in common, the
27 expenditure may be made on any one claim, leasehold location, or
28 mining lease. The commissioner shall establish the date of the com-
29 mencement of the year during which the labor or improvements are to be

1 performed. Labor shall be performed at the annual rate of \$100 [\$200]
2 per claim or leasehold location, and \$100 for each partial or whole 40
3 acres of each mining lease. If more work is performed than is re-
4 quired by this section to be performed in any one year, the excess
5 [WORK UP TO A] value [OF \$800] may be applied against labor required
6 to be done during the subsequent year or years, for as many as four
7 years. Instead of performing annual labor, the holder of a claim,
8 leasehold location, or mining lease may make a cash payment to the
9 state equal to the value of the labor required by this subsection.

10 * Sec. 3. AS 38.05.210(b) is amended to read:

11 (b) During the year in which [THE PERFORMANCE OF] annual labor
12 is required or within 90 days after the close of that year, the owner
13 of the mining claim, leasehold location, or mining lease, or some
14 other person having knowledge of the facts shall record with the
15 recorder of the district in which the claim, leasehold location, or
16 mining lease is located a signed statement setting out the informa-
17 tion, as may be required by the commissioner, concerning the annual
18 labor of the preceding year, [AND] any labor in excess of that re-
19 quired for the preceding year, and any payment of cash instead of
20 annual labor. The statement, properly recorded, is prima facie evi-
21 dence of the performance of the labor. The failure of one of several
22 co-owners to contribute the proportion of the expenditures required
23 for annual labor from the co-owner shall be treated in accordance with
24 AS 38.05.215 - 38.05.235.

25 * Sec. 4. AS 38.05 is amended by adding new sections to read:

26 Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining
27 claim, leasehold location, and mining lease, including a mining lease
28 under AS 38.05.250, shall pay, in advance, annual rental for the right
29 to continue to hold the mining claim, leasehold location, and mining

1 lease, including a mining lease under AS 38.05.250. The annual rental
2 amount shall be based on the number of the years since a mining claim,
3 a leasehold location, or a mining lease's predecessor claim or lease-
4 hold location was first located, as follows:

5	Number of Years Since	Rental Amount Per	Rental Amount
6	First Located	Acre for Mining	for Each Mining
7		Leases	Claim or Leasehold
8			Location
9	0 - 5	\$.50	\$ 20
10	6 - 10	\$1.00	40
11	11 - or more	\$2.50	100

12 (b) A claim, leasehold location, or mining lease located on or
13 before August 31, 1989 is considered to have been first located on
14 August 31, 1989 for purposes of determining the amount of rental under
15 this section.

16 (c) The rental for each year shall be credited against the
17 production royalty under AS 38.05.212 as it accrues for that year.

18 (d) The rental established under this section shall be revised
19 each 10 years by the commissioner based on the consumer price index
20 for Anchorage and published in regulations by the commissioner.

21 Sec. 38.05.212. PRODUCTION ROYALTY. (a) In exchange for and to
22 preserve the right to extract and possess the minerals produced, the
23 holder of a mining claim, leasehold location, or mining lease, includ-
24 ing a mining lease under AS 38.05.250, shall pay a royalty on all
25 minerals produced from land subject to the claim, leasehold location,
26 or mining lease during each calendar year.

27 (b) The production royalty is three percent of net income as
28 determined under AS 43.65.

29 (c) The commissioner shall adopt regulations to implement this

1 section and to provide for combined reporting and paying of production
2 royalties for mining operations that include more than one mining
3 claim, leasehold location, or mining lease.

4 * Sec. 5. AS 38.05.240 is amended to read:

5 Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In
6 AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical,
7 geophysical, and airborne surveys conducted by qualified experts and
8 verified by a detailed report filed in the recording district office
9 in which the claim, leasehold location, or mining lease is located
10 which sets out fully (1) the location of the work performed in re-
11 lation to the point of discovery and boundaries of the claim, lease-
12 hold location, or mining lease, (2) the nature, extent, and cost of
13 it, and (3) the name, address, and professional background of the
14 person conducting the work. The commissioner, by regulation, shall
15 define the nature of acceptable survey work and the qualifications of
16 a person competent to perform this work. The airborne surveys, how-
17 ever, may not be applied as labor for more than two consecutive years
18 or for more than a total of five years on any one mining claim, lease-
19 hold location, or mining lease, and each of those surveys shall be
20 nonrepetitive of any previous survey on the same claim, leasehold
21 location, or mining lease.

22 * Sec. 6. AS 38.05.250(c) is amended to read:

23 (c) Each [LEASES FOR SUBMERGED LAND SHALL BE CONDITIONED UPON
24 PAYMENT OF AN ANNUAL RENTAL OF \$3 AN ACRE. EXPENDITURES ON OR FOR THE
25 BENEFIT OF THE LEASEHOLD MAY BE CREDITED AGAINST THE RENTAL. RENT
26 SHALL BE PAID OR A STATEMENT OF ANNUAL LABOR SHALL BE RECORDED WITHIN
27 90 DAYS AFTER EACH ANNIVERSARY DATE OF THE LEASE. ALL] submerged land
28 mining lease [LEASES] shall be for a period of up to 20 years [,] and
29 for so long as there is production in paying quantities from the

1 leased area. [THE COMMISSIONER MAY MAKE REASONABLE ADJUSTMENTS OF THE
2 RENTAL RATE AT THE END OF EACH 10-YEAR PERIOD, BASED UPON CHANGED
3 CONDITIONS IN PRODUCTION COSTS AND MARKET.]

4 * Sec. 7. AS 38.05.265 is amended to read:

5 Sec. 38.05.265. ABANDONMENT. Failure to [(1)] properly record a
6 certificate of location or a statement of annual labor, [OR (2)] file
7 with the director within the time prescribed a lease application, [OR
8 (3)] pay any required annual rental, pay any required production
9 royalty [OR RECEIVE CREDIT FOR RENTAL], or [(4)] keep location bound-
10 aries clearly marked [, ALL] as required by AS 38.05.185 - 38.05.275
11 and by regulations adopted under these sections [,] constitutes aban-
12 donment of all rights acquired under the mining claim [LEASE], lease-
13 hold location, lease, or site involved, and the claim, location,
14 lease, or site [IT] is subject to relocation by others. A [IF A
15 LOCATION IS NOT RELOCATED BY ANOTHER PERSON WITHIN ONE YEAR AFTER THE
16 FAILURE, THE] locator or claimant of an [THE] abandoned location [,]
17 or a successor in interest [,] may not [RETURN TO] relocate the lo-
18 cation until one year after abandonment [IT AS THOUGH IT HAD NEVER
19 BEEN LOCATED]. A statement of annual labor that [WHICH] does not
20 accurately set out the essential facts is void and of no effect. If
21 an annual rental or a royalty payment is deficient but is otherwise
22 timely paid, abandonment does not result if full payment is made
23 within

24 (1) the period prescribed by a deficiency notice from the
25 commissioner; or

26 (2) 30 days after a final judgment establishing the amount
27 due if the deficiency amount due was contested.

28 * Sec. 8. AS 27.05 is amended by adding a new section to read:

29 ARTICLE 4. RECLAMATION.

1 Sec. 27.05.250. RECLAMATION. (a) The commissioner shall re-
2 quire reclamation of state land from the effects of mining.

3 (b) The commissioner shall adopt regulations under this section
4 and under AS 38 to implement (a) of this section. The regulations
5 must require a miner to submit to the commissioner and receive ap-
6 proval on a reclamation plan before undertaking any mining activity;
7 the regulations must also establish penalties for noncompliance with
8 the regulations. On a determination by the commissioner that a miner
9 has failed to follow the reclamation plan, the commissioner shall
10 require proof of financial responsibility before the miner undertakes
11 any further mining activity.

12 (c) In order to provide for an effective reclamation program,
13 when adopting regulations under this section and AS 38, the commis-
14 sioner shall consult with the commissioners of environmental conserva-
15 tion and fish and game.

16 (d) This section does not apply to reclamation carried out under
17 AS 27.21.

18 * Sec. 9. AS 43.05.230 is amended by adding a new subsection to read:

19 (h) The commissioner shall, upon request, furnish to the Depart-
20 ment of Natural Resources copies of tax returns, reports, documents
21 filed under AS 43.65.010 - 43.65.060, and the department's deter-
22 minations and workpapers. The Department of Natural Resources shall
23 maintain the confidentiality that the department is required to extend
24 to the returns, reports, documents, determinations, and workpapers
25 furnished to the Department of Natural Resources under this subsec-
26 tion.

27 * Sec. 10. AS 38.05.205(b) and 38.05.210(d) are repealed.

28 * Sec. 11. TRANSITION. (a) Sections 1 - 7, 9, and 10 of this Act and
29 this section apply to mining claims, leasehold locations, and mining leases

1 located before, on, or after August 31, 1989.

2 (b) The first annual rental payment due under AS 38.05.211 as enacted
3 in sec. 4 of this Act is for the annual labor year beginning September 1,
4 1989.

5 (c) The first production royalty payment due under AS 38.05.212 as
6 enacted by sec. 4 of this Act is for production after December 31, 1989.

7 (d) The commissioner of natural resources shall adopt regulations to
8 implement the changes made by secs. 1 - 7, 9, and 10 of this Act and this
9 section. The regulations take effect under the Administrative Procedure
10 Act (AS 44.62) but not before August 31, 1989. The regulations may defer
11 the date for the first annual rental payment due under AS 38.05.211 as
12 enacted in sec. 4 of this Act.

13 * Sec. 12. The commissioner of natural resources shall adopt the regu-
14 lations required by AS 27.05.250, added by sec. 8 of this Act, by July 1,
15 1991.

16 * Sec. 13. Section 11(d) of this Act takes effect immediately under
17 AS 01.10.070(c).

18 * Sec. 14. Except for secs. 8, 11(d), and 12, this Act takes effect
19 August 31, 1989.

20 * Sec. 15. Sections 8 and 12 of this Act take effect June 1, 1990.

STAVE COWPER
GOVERNOR



129

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 19, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making certain changes in the laws regarding state mining claims, leasehold locations, and mining leases. The main purpose of the bill is to resolve the long-standing "6(i)" issue, which has cast a legal cloud over the state's mining laws since statehood. The bill achieves that purpose by imposing rent and royalty requirements on state mining claims, leasehold locations, and mining leases. Those in the mineral industry will benefit from the added legal security of their mining interests, while all the people of the state will benefit from the rent and royalty income to the state.

Under existing state law, rights to "locatable" minerals (those minerals subject to location under the federal mining law at the time of statehood, including such minerals as gold, silver, and zinc) may be acquired, except in offshore areas, by staking a mining claim under AS 38.05.195, or by staking a leasehold location and converting it to a mining lease under AS 38.05.205. Present state law imposes no rent or royalty upon a mining claim under AS 38.05.195 or leasehold location under AS 38.05.205, and allows the rental requirement for a mining lease to be discharged through the performance of annual labor. AS 38.05.205(b).

In Trustees for Alaska v. State of Alaska, 736 P.2d 324 (Alaska 1987), cert. denied ___ U.S. ___, 108 S.Ct. 2013, 100 L.Ed.2d 601 (1988), the Alaska Supreme Court found that the state's mining law fails to comply with the minimum requirements in sec. 6(i) of the Alaska Statehood Act. In particular, the court found that cash rents or royalties are required for mining rights in mineral land granted under sec. 6 of the Statehood Act.

This bill conclusively resolves the "6(i)" issue within the context of existing law. The bill will minimize administrative burdens for the Department of Natural Resources and will generate significantly more in general fund revenue than it will cost to administer. Passage this session will remove the threat of an injunction against mining during this upcoming season. The balance of this letter discusses the particular changes proposed.

The bill amends AS 38.05.210 to make the annual labor requirement applicable to all mining claims, leasehold locations, and mining leases, while reducing the amount from \$200 to \$100. Cash payment in place of the annual labor will also be allowed. In addition, the current dollar limit on the application of excess work to future years is being converted to a durational limit of four years, and an unnecessary reference to AS 38.05.240 and 38.05.242 is also deleted. Section 2 of the bill.

Section 3 of the bill adds two new sections. Proposed AS 38.05.211 provides for a minimum annual rental on each mining claim, leasehold location, and mining lease. The minimum annual rental will be on a sliding scale ranging from a minimum of \$.50 per acre for a mining interest up to five years old, to a minimum of \$5 per acre for mining interests held for more than 20 years.

Proposed AS 38.05.212 provides for a minimum production royalty on all minerals produced from land subject to a claim, leasehold location, or mining lease. The production royalty will be determined on a sliding scale measured on gross income. At each level of gross income, the higher of a minimum royalty or a specified percentage of net income will be payable. The details for computing gross and net income will be established by regulations.

Section 5 of the bill amends AS 38.05.265 to provide that a mining interest is considered abandoned if no annual rental or production royalty is paid by the deadline, which will be set by regulation.

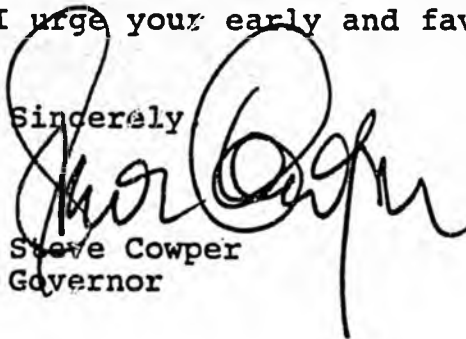
Section 6 of the bill amends AS 43.05.230 to require the commissioner of revenue to provide tax returns, reports, and documents relating to the mining license tax to the Department of Natural Resources, on the condition that confidential information be protected.

The bill includes a transition section that provides for commencement dates for the annual rental and royalty requirements. These dates will allow sufficient time for the Department of Natural Resources to adopt regulations implementing the bill.

The bill also includes technical revisions, a repealer section, and other conforming amendments, to make changes necessary to achieve the purposes generally described above.

Passage of this bill will end a long and troubled period of uncertainty under the state mining laws. It will give holders of interests in mining claims greater legal security, and the people of the State of Alaska a fair return on the public's mineral resources. I urge your early and favorable consideration of this bill.

Sincerely



Steve Cowper
Governor



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 488-3718

6(I) COMPROMISE

1. Rents and royalties will be paid on all state lands where mining activity is taking place.
2. Rents and royalties will be paid on all offshore mining leases.
3. The rental will be similar to the Governor's proposal in HB 99 except it will be capped at \$2.50 rather than \$5.00 and the rental will be set in statute rather than regulation.

0 - 5 years	\$.50 / acre
6 - 10 years	\$ 1.00 / acre
11 or more	\$ 2.50 / acre

The rental would be increased every 10 years based on the Anchorage Consumer Price Index.

4. Royalty - 3% on the net income
5. Reclamation

Section 7. AS 27.05 is amended by adding a new section to read:

27.05.250 RECLAMATION. (a) The commissioner shall require reclamation of state land from the effects of mining.

(b) The commissioner shall adopt regulations under this section and under AS 38 to implement (a) of this section. The regulations must require a miner to submit to the commissioner and receive approval on a reclamation plan before undertaking any mining activity. The regulations must also establish penalties for noncompliance with the regulations. On a determination by the Commissioner that a miner has failed to follow the reclamation plan, the commissioner shall require proof of financial responsibility before the miner undertakes any further mining activity.

(c) In order to provide to provide for an effective reclamation program, when adopting regulations under this section and AS 38, the commissioner shall consult with the commissioners of environmental conservation and fish and game.

(d) This section does not apply to reclamation carried out under AS 27.21.

Sec. 11. The commissioner of natural resources shall adopt the regulations required by AS 27.05 250, added by Sec. 7 of this Act, by July 1, 1991.

Sec. 14. Section 7 and 11 of this Act take effect June 1, 1990.

ANALYSIS OF CSSB 129 (Finance)

Assumptions: As a result of the May, 1987, Alaska Supreme Court opinion, the State's mining laws will need to be amended to require the payment of a cash rent and production royalty. There are currently over 40,000 state mining claims and 200 mining operations on state land. Each claim will be assessed a rent of \$20. Producing claims and leases will be assessed a royalty of three percent net profits. DNR estimates revenue derived from rents and royalty will be \$750,000 in FY 90 and increase to \$800,000 by FY 94. Rental payments should be \$700,000 and the royalty payments are estimated to be \$50,000 annually.

Program Summary: This funding is necessary to complete the additional work load of administering, collecting, and auditing rent and royalty payments, while maintaining both the current mining records system and the state's revenue and billing system.

Positions: A new "Accounting Technician I" position is needed in the Management and Administration BRU. This position will maintain accounts in the LAS's Revenue and Billing System, audit billing registers, and prepare worksheets and reports as necessary to assure proper accounting and coding of these funds.

Other Expenditures: A one-time capital appropriation of \$240,000 is necessary to purchase a new computer system in the "Mining Management" BRU. This new system will allow the Division of Mining to handle the additional workload of rent and royalty payment tracking and lease status verification without additional staff. Over 35,000 individual mining claims and 100 mining leases will have to be administered under this new system.

Revenues generated under this proposal will exceed expenditures in every year. Beginning in FY 90, new annual revenues of \$750,000 are projected. Expenditures for the first year (FY 90) will be \$281,900, which includes the one time capital expenses. After FY 90, the continued annual operating cost of this new work load will be approximately \$40,000, while revenue will continue to be \$750,000.

Position Title Accounting Technician I		No. of Positions 1	Range/Step 12A	Hrg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District
Justification				
The position will receive balance and code funds over the counter and by mail for payments received for the Division of Mining leases and claims. The position will determine the proper customer account, the Department handles approximately 40,000 mining leases belonging to 2500 to 3000 individual customers. The proper coding will be impacted by number of properties owned by payee. The position will do acct functions, plus provide customer information, auditing billing register to insure proper billing and researching address changes.				
Type of Expenditure		Amount		
1	2	3		
Salary	24,900			
Benefits	11,000			
Premium Pay				
Other				
Total Personal Services		35,900		
Travel				
Contractual		1,500		
Commodities		500		
Equipment		4,000		
Other				
Total Cost		41,900		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	41,900		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency NATURAL RESOURCES
 BRU MANAGEMENT & ADMINISTRATION
 Component Administrative Services

FY 90

Page 1 of 1
 Revised Date