

**SB**

**30**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: February 17, 1993

FURTHER REFERRALS:

Date of Committee Action: 2/26/93

The FINANCE Committee considered:

SB 30

SENATE BILL NO. 30

EXTEND ALASKA MINERALS COMM; AGENCY REPORT

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

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_  the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) DCED 2/10/93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ed Maclean</i> Maclean	✓	<i>Kay Brown</i> Brown		✓	
<i>Ronald Larson</i> Larson	✓	<i>Mike Navarre</i> Navarre		✓	
<i>Richard Foster</i> Foster	✓				
<i>Therriault</i> Therriault	✓				

*Ronald Larson* *Ed Maclean*  
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 2

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: SB 30

(S) Publish Date: 2-10-93

Revision Date: \_\_\_\_\_

Department Affected: Commerce and Economic Development

Title: Extending Termination Date of the Alaska Minerals Commission

BRU: Economic Development

Component: \_\_\_\_\_

Sponsor: Senators Sharp, Miller and Frank

Requestor: Senators Sharp and Frank

COMPONENT SERIAL NO. \_\_\_\_\_

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING:

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY93) impact: None - already funded.

ANALYSIS: (Attach a separate page if necessary.) Commission annual budget is \$20,400, sourced from Governor's budget.

Prepared by: Albert H. Clough, Mining Specialist

Phone: 465-5463

Division: Economic Development

Date: February 2, 1993

Approved by Commissioner: Paul Fuhs

Agency: Commerce and Economic Development

Date: February 2, 1993

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## SPONSOR STATEMENT

SB-30

Senator Bert Sharp

Purpose: Extend the Alaska Minerals Commission to 1999

The Alaska Minerals Commission is comprised of some of the best mining and resource persons in Alaska. They are extremely dedicated and the Commission has served as an advocate of mineral development and multi use of our state lands.

The Alaska Minerals Commission was created to make recommendations to the Governor and Legislature on ways to mitigate any constraints, including governmental constraints, on development of minerals, including coal, in the state.

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 all areas of the state.

I urge your favorable vote on this legislation. Thank you.

Back-up

SB 30: "Extending the termination date of the Minerals Commission."

The Alaska Minerals Commission is charged with identifying constraints to Alaskan mineral development and recommending ways to mitigate these constraints. The commission's findings and recommendations are reported to the Governor and Legislature on an annual basis. Commission efforts complement ongoing programs in the Department of Commerce and Economic Development which encourage and facilitate mineral resource, transportation, and access developments in Alaska.

The department views the Alaska Minerals Commission as an extremely cost effective vehicle to get quality expert assistance to further mineral developments throughout Alaska. Therefore, we fully support SB 30 and the continuation of the commission.

  
\_\_\_\_\_  
Paul Fuhs, Commissioner

Date: 1-29-93

# ALASKA MINERALS COMMISSION

January 1993

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## FOREWORD

The Alaska Minerals Commission was created by the 14th 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's Statement of Purpose can be found in Appendix A.

The Commission presented its initial report to the Governor and the Legislature in January 1987, presented an interim report in January 1988, and was charged with making a final report to the first session of the 16th Legislature in January 1989 after which the Commission was to expire. However, during the second session of the 15th Legislature, legislation was enacted extending the Commission's charter through January 1994. Reports were issued in 1990, 1991, and 1992, and will be issued annually through 1994.

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 Economic Development, Department of Commerce and Economic Development.

During 1992, the Commission held meetings in Juneau, Fairbanks and Anchorage, including a meeting with the Lt. Governor and Commissioners of several Departments. The recommendations in this report are the result of input at these meetings. All Commission meetings are open to the public, and members encourage comments from all interested parties at any time.

Following the list of recommendations in the executive summary, the report contains background information or findings on each issue, followed by the related recommendation. These have been grouped into a Part A which deals with issues that are mainly state issues, and a Part B which are federal issues which affect the state and can be influenced by state participation. Legislation referenced in the report is contained in the appendices.

On behalf of the members of the Commission, I would like to express our appreciation to those members of the public, to the Alaska Miners Association, the Resource Development Council, and to the many government agencies and private organizations that contributed to the preparation of the report. We especially wish to thank Acting Commissioner Paul Fuhs of the Department of Commerce and Economic Development and, Diane Mayer, Dick Swainbank, Al Clough and Nancy Long of the Division of Economic Development who have provided excellent administrative and professional support to the Commission.

We sincerely regret the passing of former Commission member Frederick O. Eastaugh during 1992, and will miss the benefits of his insights and institutional memory. We also welcome John Schnabel who was appointed by the Speaker of the House to replace Fred as a member of the Commission.

Earl H. Beistline  
Chairman

# ALASKA MINERALS COMMISSION

## 1993 Report to the Governor and Alaska State Legislature

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## EXECUTIVE SUMMARY

Despite the downturn in metal prices, the Alaska mineral industry remained healthy in 1992. The industry value for the year is expected to be similar to 1991 levels of \$612 million; providing over 3,600 direct jobs to the state. Alaska has several world-class mines and advanced exploration projects, however the state needs to address its competitiveness if it is to continue to attract capital investment in its mineral resources.

Exploration is the forerunner to development and production. Worldwide about \$2 to \$2.5 billion is spent on exploration, increasingly in countries which offer incentives such as detailed geologic and geophysical maps, tax and royalty considerations, and simplified permitting.

Many of the issues in this year's report suggest ways that Alaska can increase its share of the global exploration capital.

## RECOMMENDATIONS

### PART A: ISSUES REQUIRING STATE ACTION

#### INCENTIVES

1. The Governor and Legislature should create economic incentives that will provide financial encouragement and help offset some of the real and perceived problems facing exploration and development in Alaska. Possible incentives that should be considered include credits for expenditures on exploration drilling and geophysics that can be deducted from claim rents, the mining license tax, production royalties, and income taxes.

#### GEOPHYSICAL & GEOLOGIC MAPPING

- 2a. The Governor and Legislature should invest \$50 million over the next 8 - 10 years in airborne geophysical mapping, along with geological and geochemical surveys of known and potentially mineralized lands of state interest, and the timely publication of the resulting data.
- b. The Governor should work with the Congressional Delegation to secure full funding for the National Geologic Mapping Act of 1992.

#### MENTAL HEALTH LANDS

3. The Governor and the Legislature should amend Chapter 66 to expedite final resolution of the Mental Health Trust Land lawsuit so the State of Alaska's lands will have an important impediment removed.

#### WATER QUALITY

4. The Governor should direct the Department of Environmental Conservation (DEC) to take a strong stand against the water quality standards being promoted by the U.S. Environmental Protection Agency (EPA) and should direct the DEC to require that all regulations adopted for Alaska are based on valid scientific principles and data which allow for Alaskan conditions.

5. The Governor should direct the DEC to implement a policy that allows mixing zones for placer mining discharge to extend downstream to the point of the next nearest water supply or water recreational use.
6. The Governor should ensure that any waterbody listings developed pursuant to Section 303(d) are justified. The DEC and the Department of Natural Resources should be directed to ensure that the Total Maximum Daily Load (TMDL) assessments are based on the data and not unduly influenced by EPA or environmental plaintiffs.

#### AIR QUALITY

7. The Legislature should enact a State air quality statute that will not impose additional regulatory burdens, and will be as close as possible to Federal clean air standards.

#### ACCESS

- 8a. The state should aggressively assert all identified RS2477 Rights-of-Way.
- b. The state should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and develop precedent-setting guidelines.

#### STATE LAND SELECTIONS

9. The Governor should direct the Selection Steering Committee to select lands with development potential for minerals, fossil fuels, transportation and infrastructure, even if some of the parcels are restricted and remote from contiguous state lands.

#### STATE MINERAL POLICIES

- 10a. The Governor should establish, consistent with Section 1 of Article 8 of the State Constitution, that mineral development is in the public interest of the State and should be recognized in State land management plans.
- b. The Governor should direct that all agencies which take actions that impact the availability of mineral lands should report those actions to the Commissioner of the Department of Natural Resources by October of each year as proposed in Senate Bill 126 during the 17th Legislature. [Appendix B of this report.]

#### STATE LAND WITHDRAWALS AND MANAGEMENT

11. The Legislature should amend AS 38.05.300(a) as follows:

“(a)...uses are compatible. An area of state land, water, or land and water may not, except by act of the state legislature, be closed to mineral location or mineral leasing [multiple use] if the area involved contains more than 640 acres. This limit does not apply where mineral closures are made for land disposal or infrastructure to include but not limited to airports, ports, roads, railroads, pipelines, and powerlines.” (Underline indicates new language, with deletions in brackets.)

## STATE REGULATORY REFORM

12. The Legislature should require agencies proposing regulations to describe the probable effects of the proposed regulations including the economic impacts, and the short and long-term costs and benefits.
13. The Governor should designate and fund the Department of Natural Resources (DNR) as the lead agency in all regulatory matters concerning mining, and should direct other agencies with regulatory authority over mining, such as the Departments of Fish and Game and Environmental Conservation, to coordinate their regulatory programs through DNR.
14. The Governor should direct the Commissioner of the Department of Natural Resources to take the necessary steps to allow Miscellaneous Land Use Permits to be issued for periods of up to 5 years.
15. The Governor should direct the Commissioner of the Department of Natural Resources to revise regulations governing offshore prospecting permits such that they not be required to be subject to best interest findings, being exempted in a manner similar to leases of land for onshore fishery sites, mineral claims, or upland mining leases. A.S.38.05.035(e) should be changed by adding "(6) an offshore prospecting permit or lease issued under A.S.38.05.250."
16. The Legislature should enact legislation creating an automatic extension of permits foreshortened by court proceedings.

## CITIZEN'S ADVISORY COMMISSION ON FEDERAL AREAS

17. The Governor and Legislature should provide expanded budgetary and programmatic support to the Citizens Advisory Commission on Federal Areas.

## COASTAL ZONE MANAGEMENT

- 18a. The Legislature should amend AS 46.40.100 (b) to allow coastal zone applicants to petition for hearings.
- b. The Governor should set up a task force to evaluate all district plans to ensure that the "uses of state concern" have been incorporated in district plans, recognizing resource development as an acceptable land use option.
- c. The Governor should identify the roles and scope of authority of the coastal resource management boards and determine if periodic reviews of existing district plans should be legislatively mandated.

## COAL ISSUES

19. The Governor should direct the Department of Natural Resources to create an advisory board consisting of coal industry representatives, Division of Mining personnel involved in permitting coal mining activities, and representatives of the office of Surface Mining-Reclamation and Enforcement group. This board shall meet periodically to review the Alaska Surface Coal Mining Control and Reclamation program and make changes needed to account for Alaska's diverse conditions and for changing technologies.

## **EDUCATION AND RESEARCH**

20. The Governor and the Legislature should continue to support the Department of Education for its partial funding of a Minerals Specialist at the present or an increased level, commensurate with increased contributions from the industry-supported Alaska Mineral and Energy Resource Education Fund (AMEREF).

## **USER FEES**

21. The Governor and the Legislature should establish policy guidelines for the implementation of user fees and should establish a procedure requiring legislative and public review of all proposed user fees.

## **PART B: FEDERAL ISSUES OF STATE CONCERN**

### **MINING LAW OF 1872**

22. The Governor and the Legislature should continue to support the Alaska Congressional Delegation in upholding the existing Mining Law of 1872.

### **WETLANDS**

23. The Governor should continue to seek exemption from strict implementation of a national "no net loss" policy for Alaska.

### **ANILCA PROVISIONS**

24. The Governor and Legislature, through the Attorney General's office, the State's Washington office and the Congressional Delegation, should insist that the federal administration:
  - a. provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest lands Conservation Act (ANILCA).
  - b. prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA, and
  - c. exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.

### **FEDERAL LAND MANAGEMENT PLANNING**

25. The Governor and Legislature, through the State's Washington office and the Congressional Delegation, should introduce and support implementation of "zero based land planning" in which the agencies plan for the entire land base available BEFORE restrictive land use designations are in place, not the land base available AFTER restrictive land use designations have been enacted.

## **BERINGIAN HERITAGE INTERNATIONAL PARK**

26. The Governor and the Legislature, through the Congressional Delegation, the State's Washington Office, and by letter to the Secretary of the Interior, should oppose the creation of the Beringian Heritage International Park, the World Heritage Site designation and the Beringia International Marine Biosphere Reserve.

## **U.S. - CANADA ACCESS AGREEMENTS**

27. The Governor should review the 1825 Treaty between Russia and Great Britain and support the provisions in Article VI of the Treaty, and all other agreements, protocols and understandings between the two countries to enhance the use of Alaskan towns as supply and transportation centers.

## FINDINGS AND RECOMMENDATIONS

### PART A: ISSUES REQUIRING STATE ACTION

#### INCENTIVES

**FINDING:** The Alaskan minerals industry is in competition with a global market for mineral exploration and development dollars. Although Alaska is blessed with an abundance of geologically favorable terrain, it has suffered because of its remoteness, the lack of transportation infrastructure and seasonal constraints. Equally important is the industry's perception that State and Federal agencies are not supportive of mineral development in Alaska.

Throughout the world there are countries actively seeking exploration and development investment by providing economic incentives for resource industries. Incentive programs have been successful in Chile and Mexico where privatization and tax incentives have revitalized their mining industries. Appropriate incentives could be especially effective in drawing industry attention to Alaska because many companies currently consider the "lower 48" to be over-explored and are looking elsewhere for new exploration opportunities.

#### THE COMMISSION RECOMMENDS THAT:

1. *The Governor and Legislature should create economic incentives that will provide financial encouragement and help offset some of the real and perceived problems facing exploration and development in Alaska. Possible incentives that should be considered include credits for expenditures on exploration drilling and geophysics that can be deducted from claim rents, the mining license tax, production royalties, and income taxes.*

#### GEOPHYSICAL & GEOLOGIC MAPPING

**FINDING:** Many major mines were first discovered by individuals or small exploration companies. These groups, and even major mining companies, cannot afford the expensive regional airborne geophysical surveys needed to discover ore deposits which have no surficial expression, and are often referred to as "blind" deposits. For every ore body exposed at the surface, there are many more covered by vegetation, soil, or hundreds of feet of rock.

Many countries such as Mexico and Russia consider acquisition of this basic data a necessary and proper function of government, recognizing that investment in detailed regional airborne geophysical surveys, and geochemical and geologic mapping is repaid many-fold by revenues and jobs from producing mines. For example, the Red Dog Mine is expected to inject \$5 billion into the State over the life of the mine.

Exploration capital is the seed for future mineral development, and it is attracted to those areas with the most geologic data because of the greater chance for successful programs.

In a few years, if the National Geologic Mapping Act of 1992 is fully funded, federal matching funds may become available for at least the geologic mapping portion of a proposed Alaskan program.

#### THE COMMISSION RECOMMENDS THAT:

- 2a. *The Governor and Legislature should invest \$50 million over the next 8 - 10 years in airborne geophysical mapping, along with geological and geochemical surveys of known and potentially mineralized lands of state interest, and the timely publication of the resulting data.*
- b. *The Governor should work with the Congressional Delegation to secure full funding for the National Geologic Mapping Act of 1992.*

## MENTAL HEALTH LANDS

**FINDING:** In 1956, federal legislation created a Mental Health Trust in Alaska. One million acres of Alaska lands were deeded to the State. Revenues from those lands were first to be applied toward providing mental health services for Alaska residents, while any remaining revenues could be used for other purposes.

In May of 1991 the Alaska State Legislature passed a new mental health statute, SLA Chapter 66, which was intended to resolve litigation over the handling of the Mental Health Trust Lands after Statehood. A settlement agreement between the State and the settling plaintiffs to implement Chapter 66 is pending before the Superior Court of Judge Mary Greene.

The implementation of the settlement agreement has expanded the scope of the problem such that the Alaska Department of Natural Resources is currently restricted from taking routine management actions, including the issuance of permits and transfers of title, not only on Mental Health Lands, but also on additional millions of acres of state land. This gridlock has resulted in extreme hardships for innocent third parties, including mining companies, businesses and individuals. It would be in the best interest of the state and all its residents to resolve the lawsuit as quickly as possible.

### THE COMMISSION RECOMMENDS THAT:

- 3. The Governor and the Legislature should amend Chapter 66 to expedite final resolution of the Mental Health Trust Lands lawsuit so the State of Alaska's lands will have an important impediment removed.*

## WATER QUALITY

**FINDING:** During July of 1992, the Department of Environmental Conservation (DEC) issued a Public Review Draft containing some significant proposed revisions to state water quality regulations. As outlined in the issue papers and fact sheets accompanying the draft, DEC attempted to base these changes on scientific evaluation of the standards based on local experience and conditions. Several of the proposed regulations, including provisions related to natural characteristics of water, arsenic, groundwater, and mixing zones, are crucial to the future viability of the mining industry in Alaska. The Environmental Protection Agency (EPA) has indicated that it disagrees with some of the proposed changes, and has advised DEC that other data, some without scientific support or local input, should be used to justify much more stringent standards than proposed by DEC in July.

### THE COMMISSION RECOMMENDS THAT:

- 4. The Governor should direct the Department of Environmental Conservation (DEC) to take a strong stand against the water quality standards being promoted by the Environmental Protection Agency (EPA) and should direct the DEC to require that all regulations adopted for Alaska are based on valid scientific principles and data which allow for Alaskan conditions.*

**FINDING:** The mixing zone concept has long been identified as one of the few regulatory tools available that could allow placer miners utilizing the best of current technology a means to operate legally, while still protecting downstream uses. In the July 1992 Public Review Draft, DEC made several proposed changes to the mixing zone regulations. Unfortunately, the DEC has still not realized that the key element toward utilizing the maximum flexibility allowed under the Clean Water Act is to extend the mixing zone downstream to the point of the next use, while at the same time ensuring that the water quality standards for that next use, at the point of use, shall be met.

**THE COMMISSION RECOMMENDS THAT:**

- 5. The Governor should direct the DEC to implement a policy that allows mixing zones for placer mining discharge to extend downstream to the point of the nearest water supply or water recreation use.*

**FINDING:** Section 303(d) of the Clean Water Act (CWA) directs the State and the EPA to develop a list of waterbodies that will not meet water quality standards even after all individual sources are in compliance with NPDES permits. Total Maximum Daily Load (TMDL) assessments must be completed for these waterbodies and wasteload allocations made. During 1992, data to support a TMDL assessment was collected on the upper reaches of Birch Creek. This data shows that during normal flows, Birch Creek was in compliance with the 5 NTU (Nephelometric Turbidity Units) standard much of the time. However, with the meager budget allocated to data collection and the large drainage being sampled with many unidentified or unquantifiable sources, extreme prudence will be required to make an accurate assessment that is based on data and not preconceived notions.

**THE COMMISSION RECOMMENDS THAT:**

- 6. The Governor should ensure that any waterbody listings developed pursuant to Section 303(d) are justified. The Department of Environmental Conservation and the Department of Natural Resources should be directed to ensure that the Total Maximum Daily Load (TMDL) assessments are based on data and not unduly influenced by the Environmental Protection Agency or environmental plaintiffs.*

**AIR QUALITY**

**FINDING:** As a federal requirement for the implementation of the Clean Air Act, the State is currently preparing legislation that would modify air quality statutes:

**THE COMMISSION RECOMMENDS THAT:**

- 7. The Legislature should enact a State air quality statute that will not impose additional regulatory burdens and will be as close as possible to federal clean air standards.*

**ACCESS**

**FINDING:** The State has identified hundreds of potential Revised Statute 2477 Rights-of-Way (RS2477), and is in the process of asserting title on a selected few. However, only the Bureau of Land Management (BLM) currently has a policy for accepting state nominations and assertions.

Proposed changes to the Federal Land Policy and Management Act of 1976 (FLPMA) will require all assertions to pre-1976 rights-of-way be made before January 1, 1994, less than one year away.

RS2477 access corridors may provide the only assured access across and within the vast interlocked system of Conservation Systems Units in Alaska, other than the untested Title XI access provided for by the 1980 Alaska National Interest Lands Conservation Act (ANILCA).

**THE COMMISSION RECOMMENDS THAT:**

- 8a. The state should aggressively assert all identified RS2477 Rights-of-Way.*
- b. The state should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and develop precedent-setting guidelines.*

**STATE LAND SELECTIONS**

**FINDING:** The State is preparing to submit to the Federal Bureau of Land Management (BLM) the final selections for its land entitlement. A Department Order, (101), dated December 13, 1991, from the Commissioner of the Department of Natural Resources provided background and guidelines for the selections, identifying high mineral value as one of the preferred criteria for land selection.

Because deposits such as Red Dog and Fort Knox can provide enormous economic benefits even though they may only occupy a few Townships, the state should consider selecting small or remote parcels with high mineral potential.

**THE COMMISSION RECOMMENDS THAT:**

- 9. The Governor should direct the Selection Steering Committee to select lands with development potential for minerals, fossil fuels, transportation and infrastructure, even if some of the parcels are restricted and remote from contiguous state lands.*

**STATE MINERAL POLICIES**

**FINDING:** In recent years, state policy decisions have subordinated the activities of the resource industries to aesthetic, recreational or wildlife concerns. Numerous agencies, whose actions can be detrimental to orderly mineral development, promulgate rules and regulations without coordination, resulting in overlapping and sometimes conflicting state policies.

**THE COMMISSION RECOMMENDS THAT:**

- 10a. The Governor should establish, consistent with Section 1 of Article 8 of the State Constitution, that mineral development is in the public interest of the State and should be recognized in State land management plans.*
- b. The Governor should direct that all agencies which take actions that impact the availability of mineral lands should report those actions to the Commissioner of the Department of Natural Resources by October of each year as proposed in Senate Bill 126 during the 17th Legislature. [Appendix B of this report.]*

**STATE LAND WITHDRAWALS AND MANAGEMENT**

**FINDING:** Presently, the Commissioner of the Department of Natural Resources, (DNR), may close land to mineral entry for almost any reason deemed appropriate. Mineral closures are often made as a part of area plans with little justification and no knowledge of the mineral resources in the lands closed. In many cases the closures have covered lands that were selected by the state for their mineral potential.

Statute already requires that only the Legislature can close an area of more than 640 acres to "multiple use". However, the DNR has argued that land is still open to "multiple use" if any two uses, such as wildlife habitat and recreation, are allowed. This abuse of the intent of the statute needs to be corrected.

While there is a legitimate need for the Commissioner of Natural Resources to be able to make discretionary mineral closures on small acreages to accommodate land disposals and infrastructure such as airports, ports, and roads, the closure of large acreages should be limited to the legislature. To accomplish this, amendments should be made to Title 38 of the Alaska Statutes which deals with Public Lands.

**THE COMMISSION RECOMMENDS THAT:**

*11. The Legislature should amend AS 38.05.300(a) as follows:*

*"(a)...uses are compatible. An area of state land, water, or land and water may not, except by act of the state legislature, be closed to mineral location or mineral leasing [multiple use] if the area involved contains more than 640 acres. This limit does not apply where mineral closures are made for land disposal or infrastructure to include but not limited to airports, ports, roads, railroads, pipelines, and powerlines." (Underline indicates new language, with deletions in brackets.)*

## STATE REGULATORY REFORM

**FINDING:** 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:**

*12. The Legislature should require agencies proposing regulations to describe the probable effects of the proposed regulations including the economic impacts, and the short and long-term costs and benefits.*

**FINDING:** Presently, several state agencies claim management authority over state lands. The Administration has become a complex bureaucracy with multiple agencies vying for regulatory management of mineral development. The number of permits, the time required to secure permits, the number of agencies and the costs related to obtaining permits is becoming excessive.

**THE COMMISSION RECOMMENDS THAT:**

*13. The Governor should designate and fund the Department of Natural Resources (DNR) as the lead agency in all regulatory matters concerning mining, and should direct other agencies with regulatory authority over mining, such as the Departments of Fish and Game and Environmental Conservation, to coordinate their regulatory programs through DNR.*

**FINDING:** Authority for the issuance of Alaska Placer Mining Permits comes through the Miscellaneous Land Use Permit process. As the regulations are currently written, a permit under this section can be issued for only one year. Allowing longer permit periods would create a more stable environment for planning and financing mining projects while significantly reducing the workload of the Division of Mining.

**THE COMMISSION RECOMMENDS THAT:**

14. *The Governor should direct the Commissioner of the Department of Natural Resources to take the necessary steps to allow Miscellaneous Land Use Permits to be issued for periods of up to 5 years.*

**FINDING:** There is currently a requirement that a best interest finding be made before an offshore prospecting permit (OPP) can be issued by the DNR. The process of generating a best interest finding is being used to restrict DNR from normal issuance of OPPs.

**THE COMMISSION RECOMMENDS THAT:**

15. *The Governor should direct the Commissioner of the Department of Natural Resources to review regulations governing offshore prospecting permits such that they not be required to be subject to best interest findings, being exempted in a manner similar to leases of land for onshore fishery sites, mineral claims or upland mining leases. A.S.38.05.035(e) should be changed by adding "(6) an offshore prospecting permit or lease issued under A.S.38.05.250."*

**FINDING:** The usable term of a permit may be reduced or eliminated when a permittee is prohibited from operating under their permit due to third party litigation challenging the issuance, validity, completeness or other aspects of the permit. Though the litigation may not be successful, the permittee has still been damaged. Statutory action should be taken to remedy this situation.

**THE COMMISSION RECOMMENDS THAT:**

16. *The Legislature should enact legislation creating an automatic extension of permits foreshortened by court proceedings.*

**CITIZEN'S ADVISORY COMMISSION ON FEDERAL AREAS**

**FINDING:** The Citizens Advisory Commission on Federal Areas was established by the Alaska Legislature in 1981 shortly after the enactment of the Alaska National Interest Lands Conservation Act. The Commission is composed of 16 members, half of whom are appointed by the Governor and half by the Legislature, including four sitting legislators. The Commission analyzes federal legislation, regulations and management decisions, determines the impact of these actions on Alaska's citizens, and makes recommendations to both State and Federal agencies for corrective actions to problems identified.

Development of Federal lands and regulations for access across them is important to the State's economy. The Commission provides a valuable and cost-effective mechanism through which State concerns regarding management of all Federal lands can be expressed.

**THE COMMISSION RECOMMENDS THAT:**

17. *The Governor and Legislature should provide expanded budgetary and programmatic support to the Citizen's Advisory Commission on Federal Areas.*

**COASTAL ZONE MANAGEMENT**

**FINDING:** Alaska Statute, Sec. 46.40.100 (b) does not allow applicants to petition the Coastal Policy Council when relief is sought on decisions made by the coastal resource district or state agency. The State administration is evaluating the role and functions of the Coastal Policy Council in relation to the power it has over decisions

made by state agencies. Council implementation of AS 46.40.060, which requires screening of local district plans for arbitrary or unreasonable restriction or exclusion of "uses of state concern," has been inconsistently implemented, particularly with respect to large-scale industrial and commercial developments identified in AS 46.40.210 (6) (c). The role of the coastal resource service area boards is unclear, and the boards and district are not required to modernize district plans.

**THE COMMISSION RECOMMENDS THAT:**

- 18a. The Legislature should amend AS 46.40.100 (b) to allow coastal zone applicants to petition for hearings.*
- b. The Governor should set up a task force to evaluate all district plans to ensure that the "uses of state concern" have been incorporated in district plans, recognizing resource development as an acceptable land use option.*
- c. The Governor should identify the roles and scope of authority of the coastal resource management boards and determine if periodic reviews of existing district plans should be legislatively mandated.*

## COAL ISSUES

**FINDING:** The Alaska Surface Coal Mining Control and Reclamation program is constantly being reviewed for possible change in response to changes in the federal program. To ensure that these oversight reviews and any resulting changes to the State's program reflect Alaska's diverse conditions, there needs to be close communication and cooperation between Alaska's coal industry and State and federal agencies involved in program administration.

**THE COMMISSION RECOMMENDS THAT:**

- 19. The Governor should direct the Department of Natural Resources to create an advisory board consisting of coal industry representatives, Division of Mining personnel involved in permitting coal mining activities, and representatives of the office of Surface Mining-Reclamation and Enforcement group. This board shall meet periodically to review the Alaska Surface Coal Mining Control and Reclamation program and make changes needed to account for Alaska's diverse conditions and for changing technologies.*

## EDUCATION AND RESEARCH

**FINDING:** 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 Mineral and Energy Resource Education Fund (AMEREF). AMEREF is an industry-supported organization which annually funds the production and replacement of the teaching materials, and which partially funds the salary of a Mineral Specialist in the Department of Education who is responsible for providing teacher training and for implementing the program into the school system. This program has proven to be a success and reflects the cooperation that has existed during the 10 years of the programs' existence.

**THE COMMISSION RECOMMENDS THAT:**

- 20. The Governor and the Legislature should continue to support the Department of Education for its partial funding of a Minerals Specialist at the present or an increased level, commensurate with increased contributions from the industry-supported Alaskan Mineral and Energy Resource Education Fund (AMEREF).*

## USER FEES

**FINDING:** Increased user fees have been suggested as a means of offsetting the cost of providing government service as the state faces declining revenues. However, allowing state agencies to unilaterally implement user fees could result in uncontrolled increases in the cost of basic services required by citizens and businesses, and allow state agencies to operate outside the legislature's budgetary process. Additionally, the implementation of user fees should carefully balance the need to generate revenues against the increased cost to citizens and businesses for necessary services and required permits.

In addition to these general concerns, the mineral industry is concerned about fee schedules and access restrictions for technical resource and land information from state databases. Onerous fees and restrictive use agreements for this information will discourage investment in mineral exploration and development.

**THE COMMISSION RECOMMENDS THAT:**

21. *The Governor and Legislature should establish policy guidelines for the implementation of user fees and should establish a procedure requiring legislative and public review of all proposed user fees.*

## PART B: FEDERAL ISSUES OF STATE CONCERN

### MINING LAW OF 1872

**FINDING:** The 1872 Mining Law was modified in 1992 in regard to patenting rules, and particularly in regard to a temporary annual rental fee of \$100 per claim. This fee, which has minor exemptions, will be onerous to the small company, and will result in the loss of many claims. It is expected that further assaults will be made on the integrity of the Law in 1993.

**THE COMMISSION RECOMMENDS THAT:**

22. *The Governor and Legislature should continue to support the Alaska Congressional Delegation in upholding the existing Mining Law of 1872.*

### WETLANDS

**FINDING:** An Administration proposal to exempt from wetlands regulations those states where less than 1% of the wetlands has been disturbed was published in the Federal Register on November 4, 1992.

**THE COMMISSION RECOMMENDS THAT:**

23. *The Governor should continue to seek exemption for Alaska from strict implementation of a national "no net loss" policy.*

## ANILCA PROVISIONS

**FINDING:** In order to assure passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, there were several sections included to protect pre-existing rights. Several provisions would allow mineral development on or near otherwise withdrawn land. Title XI addressed access across the Conservation System Units (CSU). Sections 101d and 1326b assured that no more land in Alaska would be considered for new CSU or similar designations. Sections 103b and 1302h provided mechanisms for the Secretary of the Interior to adjust the boundaries of CSU or to exchange lands within them to exclude mineralized areas.

### THE COMMISSION RECOMMENDS THAT:

24. *The Governor and Legislature, through the Attorney General's office, the State's Washington office and the Congressional Delegation, should insist that the federal administration;*
- a. *provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest lands Conservation Act (ANILCA).*
  - b. *prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA, and*
  - c. *exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.*

## FEDERAL LAND MANAGEMENT PLANNING

**FINDING:** During each cycle of federal land management planning, the acreage available for multiple use is incrementally reduced by the creation of wilderness or similarly restrictive land use designations. This one-way process continually removes public lands from multiple-use categories with no consideration for the cumulative impact on the availability and national need for natural resources.

### THE COMMISSION RECOMMENDS THAT:

25. *The Governor and Legislature, through the State's Washington office and the Congressional Delegation, should introduce and support implementation of 'zero based land planning' in which the agencies plan for the entire land base available BEFORE restrictive land use designations are in place, not the land base available AFTER restrictive land use designations have been enacted.*

## BERINGIAN HERITAGE INTERNATIONAL PARK

**FINDING:** A federal bill entitled "Beringian Heritage International Park Act of 1991," proposes a joint Russian and American park on both sides of the Bering Straits. The creation of an international park could negatively impact neighboring lands, access, and resource development in northwest Alaska. In addition to support of the International Park, the National Audubon Society recommends the creation of a "Beringia International Marine Biosphere Reserve" and a "World Heritage Site."

### THE COMMISSION RECOMMENDS THAT:

26. *The Governor and the Legislature, through the Congressional Delegation, the State's Washington Office, and by letter to the Secretary of the Interior, should oppose the creation of the Beringian Heritage International Park, the World Heritage Site designation and the Beringia International Marine Biosphere Reserve.*

## U.S. - CANADA ACCESS AGREEMENTS

**FINDING:** Mineral development on adjacent Canadian lands can have a very positive impact on those nearby Alaskan towns such as Skagway, Haines, Juneau and Wrangell which are used as supply and transportation bases.

In the 1825 agreement between Britain and Russia, the boundary between the Crown Lands, (Canada), and the Russian possession (Alaska) was drawn essentially as it is today, with the exception that the border should never exceed a distance of 10 marine leagues, (about 30 miles), from the coast. In the 1867 purchase agreement between the United States and Russia, all of the 1825 agreements between Russia and Great Britain were to be honored. Article VI of the 1825 agreement states,

"It is understood that the subjects of his Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall forever enjoy the right of navigating freely, and without any hinderance whatever, all the rivers and streams which in their course to the Pacific Ocean may cross the line of demarcation upon the line of coast described in Article III of the present Convention".

### THE COMMISSION RECOMMENDS THAT:

27. *The Governor should review the 1825 Treaty between Russia and Great Britain and support the provisions in Article VI of the Treaty, and all other agreements, protocols and understandings between the two countries to enhance the use of Alaskan towns as supply and transportation centers.*

## APPENDICES

A. **Alaska Minerals Commission Statement of Purpose and Statute Authorizing Commission**

B. **Legislation Referenced in This Report**

SB 126 - An Act relating to the Review and Reporting Requirement of Agencies of the State Relating to the State Mineral Policy; and Providing for an Effective Date.

## APPENDIX A

### ALASKA MINERALS COMMISSION STATEMENT OF PURPOSE AND STATUTE AUTHORIZING COMMISSION

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 endorse and promote development of a viable mining industry in the State.

Chapter 98  
Session Laws of Alaska, 1986  
As Amended by  
Chapter 71  
Session Laws of Alaska, 1988

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, restriction 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.

Section 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, one of whom must reside in a rural community. 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. Each member serves at the pleasure of the appointing authority.

(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 report its recommendations each year to the Governor and the Legislature during the first 10 days of the regular session of the Legislature.

Sec. 3. This Act is repealed February 1, 1994.

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

## **APPENDIX B**

### **LEGISLATION REFERENCED IN REPORT**

SB 126 An Act Relating to Review and Reporting Requirement of Agencies of the State Relating to the State Mineral Policy; and Providing for and Effective Date.

**CS FOR SENATE BILL NO. 126 (RESOURCES)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered: 4/14/92**  
**Referred: Finance**

**Sponsor(s): SENATORS FRANK, Sturgulewski, Pearce, Uehling, Jones**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the review and reporting requirements of agencies of the state relating  
 2 to the state mineral policy; and providing for an effective date."

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

4 \* **Section 1.** AS 44.99.110 is amended by adding new subsections to read:

5 (b) Each agency listed in (g) of this section shall review its statutory authority, its  
 6 administrative regulations, and its procedures applicable to mineral exploration and development  
 7 to determine whether there are deficiencies or inconsistencies that must be addressed in order to  
 8 comply with the policy established in (a) of this section.

9 (c) Each agency listed in (g) of this section shall forward to the commissioner of natural  
 10 resources on October 1 of each year its previously unreported

11 (1) ~~comments and recommendations on the resolution of the deficiencies and~~  
 12 ~~inconsistencies in its statutory authority, its administrative regulations, and its procedures~~  
 13 ~~applicable to mineral exploration and development;~~

14 (2) progress that it has made on the resolution of the deficiencies and

1 inconsistencies that were identified in earlier reports.

2 (d) Notwithstanding (c) of this section, every four years each agency listed in (g) of this  
3 section shall compile and forward to the commissioner of natural resources its unreported and  
4 previously reported comments and recommendations under (c)(1) of this section and progress  
5 under (c)(2) of this section.

6 (e) The commissioner shall assemble the comments, recommendations, and reports  
7 received under (c) or (d) of this section and forward them, unedited, to the governor and the  
8 legislature within the first 10 days of each regular session of the legislature.

9 (f) Each agency listed in (g) of this section shall work with mining interests, coastal  
10 resource service areas, the public, and other resource users to propose solutions to inconsistencies  
11 and deficiencies identified.

12 (g) The requirements of (b) - (f) of this section apply to

13 (1) the Department of Commerce and Economic Development;

14 (2) the Department of Environmental Conservation;

15 (3) the Department of Fish and Game;

16 (4) the Department of Natural Resources;

17 (5) the Department of Revenue;

18 (6) the office of management and budget;

19 (7) the Alaska Railroad Corporation;

20 (8) the University of Alaska; and

21 (9) any other agency of the state designated by the Alaska Minerals Commission

22 \* **Sec. 2. INITIAL REPORT.** In making the initial report required under AS 44.99.110, as amended  
23 by sec. 1, of this Act, the agencies listed in AS 44.99.110(g), as added by sec. 1 of this Act, shall report  
24 as required under AS 44.99.110(d), as added by sec. 1 of this Act.

25 \* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).