

HB

132

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 5, 1993

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 3/29/93

The RESOURCES Committee considered:

HB 132

HOUSE BILL NO. 132

EXTEND RESOURCE EXTRACTION PERMIT/LEASE

"An Act extending the time period of all permits issued by the state relating to the extraction or removal of resources if the holder of the permits is involved in litigation concerning the issuance or validity of any permit related to the extraction or removal."

RECOMMENDATIONS:

be replaced with CS HB 132 (res) 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 DNR

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hudson</i> Hudson	<input checked="" type="checkbox"/>	<i>[Signature]</i> Finkelstein		<input checked="" type="checkbox"/>	
<i>[Signature]</i> Carney	<input checked="" type="checkbox"/>	<i>[Signature]</i> Davies			
<i>[Signature]</i> James	<input checked="" type="checkbox"/>				
<i>[Signature]</i> Bunde	<input checked="" type="checkbox"/>				
<i>[Signature]</i> Williams	<input checked="" type="checkbox"/>				

[Signature]
CHAIRMAN'S SIGNATURE



Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Sponsor Statement for HB 132

Many resource development projects in Alaska are delayed by time consuming litigation. These delays can not only drive up the costs of a project, they can kill it.

Most of the lawsuits filed on resource development projects are over federal permits. While the developer is tied up in court, the clock is still running on the state permits for the project. Even if the permit holder wins in court, the useful time span of state permits will be shortened or may even run out, requiring another round of permit applications and fees.

HB 132 will help to fix this problem. All state issued permits relating to a resource extraction or removal project will be extended if:

- 1) a lawsuit is brought over a state or federal permit for the project;
- 2) a court order from that suit prevents them from operating;
- 3) the permit holder wins in court;
- 4) the permit holder notifies the state of the proceedings.

The state issued permits will then be extended by the amount of time lost to the lawsuit, not to exceed the original length of the permit. The state would not be able to impose a fee or charge for the extension.



A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BRICE

TO: HB 132

Page 2, following line 17:

Insert a new subsection to read:

"(d) In this section, "permit" means a permit, lease, authorization, license, or any other determination necessary for or related to resource extraction or removal."

Page 2, line 18, following "APPLICABILITY.":

Insert "(a)"

Page 2, following line 21:

Insert a new subsection to read:

"(b) In this section, "permit" has the meaning given in AS 46.35.300(d), added by sec. 1 of this Act."

FISCAL NOTE

STATE OF ALASKA 1993 LEGISLATIVE SESSION

BILL NO. CSHB 132 (RES)

Revision Date Original Department Affected: Natural Resources
 Title: "An Act extending the time period of all BRU: various
permits issued by the state relating to the extraction or..." Components: Commissioner's Office
 Sponsor: Representative Brice
 Requestor: RES, JUD, FIN Component Serial No. 423

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year (FY93) Impact: \$ No fiscal impact anticipated

ANALYSIS: (Attach a separate page if necessary)
 The intent of the bill is to acknowledge the impact of delays due to litigation on time limited activity authorization (permits). To acheive this goal, perhaps it may only be necessary to ~~fill~~ ^{fill} the term of the original permit rather than to provide ar'dditional time to the permit term.

Prepared by: Raga S. Elim Phone: 465-2400
 Division: Commissioner's Office Date: 26-Mar-93
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Date: 26-Mar-93
 Agency: Department of Natural Resources

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Alaska State Legislature

State Capitol

Juneau, Alaska 99801-1182

provided by Representative Tom Brice

Sectional Summary of HB 132

Section 1:

Adds a new section AS 46.35.300

(a) The state will extend the time period of all state issued resource extraction or removal permits under certain conditions:

(a)(1) The permit holder must be sued by a third party over a state or federal permit.

(a)(2) The permit holder must be prevented from operating by a court order from that lawsuit.

(a)(3) The permit holder must win in court.

(a)(4) The permit holder must notify the state about the outcome of the proceedings.

(b) Any state permits related to that resource extraction or removal will be extended by the amount of time lost to the lawsuit.

(c) The permit holder would not have to pay additional fees for the extension.

Section 2:

Applies to all permits affected by qualifying lawsuits after the effective date.

House Bill 132

The Department of Commerce and Economic Development supports passage of House Bill 132.

Resource developers are frequently faced with third-party legal challenges after they have received agency approvals for their projects. Permits are typically issued for a defined period of time. The usable term of a permit may be reduced or eliminated if a permittee is prohibited from operating under the permit by a court as the litigation proceeds. Even if the court rules in favor of the permittee, the permittee is damaged not only by the project delay, but also by the loss of operational time originally allowed under the permit.

This legislation eliminates the loss of operational time allowed a permittee under a permit which is issued by the state and is caused by legal actions initiated by persons other than the state.

House Bill 132 provides those who have successfully met the regulatory requirements of the state an assurance that the state will be aggressive in its support of the operational term of the permit. House Bill 132 also helps limit the utility of third-party use of the courts to impair the development of approved projects.

The effectiveness of this legislation could be improved by:

1. Defining "permit" to mean a permit, lease, authorization, license, or any other determination necessary for completion of a project.
2. Expanding the application beyond resource extraction or removal projects to include any type of development project, including infrastructure developments (ports, schools, etc.).



Paul Fuhs, Commissioner

3-25-93

Date

dgl/172pp.ed



Charlie Boddy
Vice President Government Relations

March 23, 1993

Representative Tom Brice
Alaska State Legislature
Juneau, Alaska

HOUSE BILL NO. 132 - An Act Extending the Time Periods of Permits

Dear Representative Brice,

I wish to take this opportunity to thank you and your staff for keeping me appraised of the continuing work on this most important piece of legislation. I offer these comments and observations prior to your hearing schedule starting. For your reference, similar comments were included in a report forwarded to Governor Hickel as part of a task force report on regulatory reform.

The net usable term of a permit or other delivered authorization sometimes is reduced significantly or even eliminated entirely when a person or company is prohibited from using it due to some action by an intervening third party. Any third party may challenge administrative decisions regarding permits and other authorizations for a variety of frivolous reasons. A person or company can then become damaged by the foreshortening of durable time guaranteed by a permit or other authorization.

This legislation will provide for more equal footing by restoring the time guaranteed in the original approval. You have provided in this legislation a remedy to those who suffer monetary or other damage, a mechanism for recovery that has been sorely missing for many years. I am sure that others from the mining community will provide the committees numerous comments and examples of past problems.

If I can be of any assistance during hearing process, please don't hesitate to call. With best regards, I remain,

March 26, 1993

To: Representative Tom Brice

C. C. Hawley - signed
From: Chuck Hawley, Mining Geologist, # 300-941 E Dowling,
Anchorage, Ak 99518

Subject: H B 132, a bill to extend the time period for permits

This brief note is to support H B 132. It would be an important tool to support warranted development in Alaska.

My view is derived from the circumstances surrounding a project that I was involved in at Nyac, Alaska during the early 1980's, and still am involved in trying to clean up.

Briefly, Nyac is an important placer mining camp in Southwest Alaska, about 100 miles east of Bethel. It has been mined nearly continuously by bucket-line dredges and washing plants since 1928. In 1980, I was general partner in Northland Gold Dredging.

Our company leased mining claims at Nyac, and in 1980 rebuilt a dredge at a cost in excess of \$1,000,000. We operated in 1981 and 1982. In 1983, we began to repermit the operation so that we could move the dredge to the lower part of the reserves and begin a systematic "upstream" operation in the broad flood plain of the Tuluksak River. Mining "upstream" in a broad valley with a bucket line dredge, means that you have a bank of tailings below the operation that assists in filtering any effluent of the operation and protects downstream water quality.

We were successful, in a difficult two-year period, of obtaining the necessary permits to mine. The main permits came from Corps of Engineers, BLM, EPA, on the federal side and DEC and DFG on the State side. We also passed Coastal Zone consistency review.

After Northland received its permits, the agencies granting the permits were sued. Critical suits were in Federal Court against the BLM, and in State Court against a favorable Coastal Zone management decision. (Nyac was not in the coastal zone, but it could be construed that the operation might affect the coastal zone).

Although the lawsuits were never fully resolved, and indeed coastal zone was never heard, the ultimate result was that the project finally failed.



ALASKA MINERS ASSOCIATION, INC.

501 West Northern Lights Boulevard, Suite 203, Anchorage, Alaska 99503 fax: (907) 278-7997 telephone: (907) 276-0347

March 26, 1993

Honorable William Williams
Chairman
House Resources Committee
Alaska State Legislature
Juneau, AK 99801-1182

Re: HB-132, An Act Extending The Time Period of Permits

Dear Representative Williams,

I am writing on behalf of the Alaska Miners Association in support of House Bill 132.

The cost of developing a mine or any other resource project in Alaska is significant and the potential problems are many. In particular, when a company decides to develop minerals in Alaska there are many challenges that are expected. These challenges include the lack of infrastructure, the climate, the difficulty of locating an economic ore deposit, the difficulty of obtaining the financing and finally the difficulty of obtaining all the myriad of permits. These challenges are part of the business.

There are however other impediments to developing a mine that are not based on the merits of the project. One such case is where third party suits are filed. Such suits and opposition are often based on a philosophical viewpoint that there should be no development in Alaska the "big park" or at least "not in my backyard". HB-132 seeks to address one aspect of this issue.

We see two important benefits associated with passage of this bill. The first and most obvious benefit is that although the project owner may be delayed, he will not lose the investment made in obtaining the necessary permits and will not run the risk of being forced to go through the permitting process before he has the opportunity to exercise the permits. If third party litigation against the project delays start-up until the term of the permits has lapsed, or nearly lapsed, the project owner would be forced to go through the permitting process again. This bill would require that the term of the permits be extended for whatever period the project owner was affected by the litigation.

The second benefit is less material but yet it may be even more important for the future of the State. This benefit is the in the message that such a bill will have for the international mining

March 26, 1993

To: Representative Tom Brice

From: *C. C. Hawley - revised*
Chuck Hawley, Mining Geologist, # 300-941 E Dowling,
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After Northland received its permits, the agencies granting the permits were sued. Critical suits were in Federal Court against the BLM, and in State Court against a favorable Coastal Zone management decision. (Nyac was not in the coastal zone, but it could be construed that the operation might affect the coastal zone).

Although the lawsuits were never fully resolved, and indeed coastal zone was never heard, the ultimate result was that the project finally failed.

It would be inappropriate to say that a bill like H B 132 would have saved the project, because the circumstances were more complex. But at all times, we had difficulty holding our investment base, partly because of the uncertain nature of our permits after the conclusion of the lawsuits.

It appears that H B 132 would not have a negative environmental effect, because if lawsuits against the project were successful, the resolution of litigation should be that a project could be modified so that it accepts necessary and valid corrections.

Finally, I would like to express my appreciation to the committee for considering this legislation. It means that they are aware of the tremendous impediments to development that exist in Alaska. I believe the results at Nyac were not even close to a win-lose situation, let alone a win-win deal. No one won anything. The investors finally lost nearly \$3,000,000; southwest Alaska lost about 25-well paying jobs that would have been in existence for many years. The environmental work done over many years at Nyac shows that mining resulted in gains as well as losses to the biologic productivity of the region, but on balance gains from mining appear to at least equal any losses that could have occurred because of mining--so there was not even an environmental gain from killing the project.



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ALASKA MINERS ASSOCIATION, INC.

industry. That message is that Alaska wants to see mineral development and that the State wants to change the negative image that continues to prevail in the industry.

There are two locations in the bill that should be modified. The first is on page one line 12. We would suggest the phrase be modified to read "...shall be extended by the agencies issuing the permits if the holder of the permits or an agency...". In most instances it is an agency involved in some aspect of issuing a permit that is the sued rather than the company receiving the permit. The suggested change would insure that the permits would be extended if an agency, in addition to the applicant, is sued.

The second modification is on page two line 19 where we would suggest referencing the existing definitions with the words "...all permits relating to resource extraction or removal as defined by 46.35.200(4) that are affected by litigation...". This minor modification will further clarify the applicability of this new Section 1.

Alaska is now in fierce competition for exploration and development funding with countries all around the world. Many countries are changing their laws for mining, investment, ownership of property, repatriation of profits and permitting to encourage minerals investment. We must also do everything practical and possible to improve the business climate or Alaska will not experience the mineral development and associated job creation that is otherwise possible.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Tom Brice

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 29, 1993

SUBJECT: Extension of Permits - CSHB 132(RES) (Work Order No. 18-LS0527\O)

TO: Representative Bill Williams
Attn: Mary McDowell

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

Enclosed is the final CS(RES) you requested. I have a comment about the committee substitute. The amendment the committee adopted (p. 2, line 24, of the committee substitute) that provides that sec. 1 of the Act "applies to all permits relating to resource extraction or removal as defined in AS 46.35.200(4)" (the underlined language in bold type was added by the committee) is, at the least, very confusing. The committee substitute already defines "permit" to be "a permit, lease, authorization, license, or another determination necessary for or related to resource extraction or removal" (p.2, lines 21-22). This definition of permit is very broad and applies to both the substantive provisions of sec. 1 and the applicability provision of sec. 2. But the language added by the committee defines a "permit" in a contradictory manner for purposes of the applicability section, sec. 2, by providing that sec. 1 of the committee substitute only applies to the permits that are related to resource extraction and removal that are listed in AS 46.35.200(4) or are designated by the commissioner under that section. The definitions are not consistent. Further, the list of permits provided in AS 46.35.200(4) has not been kept up to date and cannot be considered accurate. It has not been kept up to date by the legislature because the one-stop permit procedure provided in AS 46.35 has never, to the best of my knowledge, been: (1) funded by the legislature; or (2) otherwise implemented by the executive branch. The use of the definition of "permit" provided by AS 46.35.200(4) can only lead to confusion and the possibility of litigation to resolve the ambiguities engendered by the adoption of this out-dated listing.

Finally, applying this definition to the applicability section of the bill and not to the substantive portion of the bill seems at the best ill-conceived. If the definition of "permit" the committee desires is that found in AS 46.35.200(4) then that definition

Representative Bill Williams
March 29, 1993
Page 2

should be substituted for the definition of "permit" found in both the substantive portion of the bill, sec. 1, p. 2, lines 21 - 22, and in the applicability section, sec. 2, p. 2, lines 27 - 28.

GPL:pl
93-245.plm

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GPL:pl
93-245.plm



HOUSE RESOURCES COMMITTEE

DATE: March 29, 93

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
 HB 76
 HB 132
 HB 201 Mental Health Laws Amendments

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Rick Johanson	Coalition for Alternative Settlement	1029 W. Third Ave. Suite 300 Anchorage, AK	99501	561-0406	279-8561	(Y) N	HB 201
Anne Wieland	Kachemak Bay Citizens Coalition	1421 N St Anch	99501	276-5477	-	(Y) N	HB 76
BRIAN ANDREWS	DOR			465-7880		Y N	HB 201 / Questions
RUSSELL HEATH	ALASKA ENVIRONMENT LOBBY	PO Box 22151 Juneau AK	99801	463-3366	463-3366	(Y) N	HB 76
TOM WALDO	SCDF - Public Interest In Recovery	325 4th St Juneau	99801		586-2751	Y N	HB 201 / Questions
Pamela J. ...	Leg. Affairs	Goldstein ...			465-2950	Y N	HB 201
David Walker						Y N	HB 201
Bruce Phelps	Div of the Land	3601 C St. Suite 814 Anchorage			762-2239	Y N	
Rae Elm						Y N	
						Y N	
						Y N	