

**HB**

**333**



CS FOR HOUSE BILL NO. 333(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Brice, Hudson, Phillips, James, Olberg, Sanders, Toohey, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the Alaska Land Act to define the term 'state selected land'  
2 for the purpose of recognizing mining locations, and giving retrospective effect to  
3 the amendment; and providing for an effective date."

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

5 \* Section 1. AS 38.05.275 is amended by adding new subsections to read:

6 (b) In this section, "state selected land"

7 (1) means land for which the state has filed a selection application with  
8 the United States under Sec. 6 of the Alaska Statehood Act, as amended, regardless  
9 of the validity or effect of the application, if the selection described in the application  
10 has not been rejected or relinquished;

11 (2) does not include land described in (1) of this subsection for which  
12 a regional corporation organized under 43 U.S.C. 1606(a), as amended, a village  
13 corporation organized under 43 U.S.C. 1607(a), as amended, a Native group  
14 corporation that qualifies for a land conveyance under 43 U.S.C. 1615(h)(2), as

1 amended, or a Native urban corporation that qualifies for a land conveyance under 43  
2 U.S.C. 1613(h)(3), as amended, has filed a valid selection application with the United  
3 States under 43 U.S.C. 1601 - 1641, as amended, if the selection of the corporation or  
4 group has not been rejected or relinquished.

5 (c) Subsection (b) of this section may not be construed to limit the director in  
6 the exercise of authority granted by AS 38.05.035(a)(12).

7 \* **Sec. 2. APPLICABILITY TO MINING LOCATIONS ON STATE LAND ALSO**  
8 **SELECTED UNDER PROVISIONS OF THE ALASKA NATIVE CLAIMS SETTLEMENT**  
9 **ACT, AS AMENDED.** Notwithstanding the exclusion of land from the definition of "state  
10 selected land" by AS 38.05.275(b)(2), added by sec. 1 of this Act, a mining location that was  
11 made on that land under AS 38.05.185 - 38.05.275 or in the manner described in AS 27.10  
12 on or after April 14, 1966, and before the effective date of this Act retains its validity, if any,  
13 if the selection of the land by all corporations or groups eligible to make a selection under 43  
14 U.S.C. 1601 - 1641 is rejected or relinquished.

15 \* **Sec. 3.** AS 38.05.275(b) and (c), added by sec. 1 of this Act, are retroactive to April 14,  
16 1966, and apply to locations made under AS 38.05.185 - 38.05.275 or in the manner described  
17 in AS 27.10 on and after that date.

18 \* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature  
House of Representatives

COMMITTEES:  
HEALTH, EDUCATION  
& SOCIAL SERVICES  
JUDICIARY  
STATE AFFAIRS

SPECIAL COMMITTEES:  
MILITARY & VETERANS AFFAIRS  
OIL & GAS



INTERIM:  
EAGLE CENTER, SUITE 141  
EAGLE RIVER, AK 99577  
PHONE (907) 694-8944  
FAX 694-8945

SESSION:  
STATE CAPITOL  
JUNEAU, AK 99811  
PHONE (907) 465-3777

Representative Pete Kott

SPONSOR STATEMENT

HB 333 – MINING LOCATIONS ON STATE SELECTED LAND

Currently, state law provides that mining locations can be made on state land and on state selected land. The statutory definition of state land is found in AS 38.05.965(20). "State selected land" is not defined, and HB 333 is written to provide that definition.

The period during which the state could make selections under the Statehood Act as amended came to a close on January 3, 1994. Presently there are approximately 21 million acres in selected status. Because the state is allowed a 25% over-selection, only approximately 17 million acres will become state land, and there is no way of knowing with certainty which selected lands will actually become state land. Much of this land is potentially mineralized, and the state has an interest in ensuring there is a mechanism for miners to identify and lay claim to potential deposits.

It should be noted that claims filed on state selected land are "at risk" in the sense that they confer no rights unless and until the land is actually conveyed to the state of Alaska. At the time the state receives Tentative Approval to the land in question, the first person who staked an "at risk" claim while the land was in selected status would become a first-in-time locator and have the rights and privileges thereof under state law.

HB 333 is needed to support the efforts of Alaska's mining industry which provides an important part of the state's total employment. The state's interest in sound and appropriate development of Alaska's resources will be well served by passage of this measure.



8-LS1340X  
Chenoweth  
2/1/94

CS FOR HOUSE BILL NO. 333( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Brice, Hudson, Phillips, James, Olberg, Sanders, Toohey, Green

A BILL  
FOR AN ACT ENTITLED

1 "An Act amending the Alaska Land Act to define the term 'state selected land'  
2 for the purpose of recognizing mining locations, and giving retrospective effect to  
3 the amendment; and providing for an effective date."

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

5 \* Section 1. AS 38.05.275 is amended by adding new subsections to read:

6 (b) In this section, "state selected land"

7 (1) means land that has been selected by the state under Sec. 6 of the  
8 Alaska Statehood Act, as amended, as to which the state has filed a selection  
9 application with the United States, regardless of the validity or effect of the  
10 application, if the selection described in the application has not been rejected or  
11 relinquished;

12 (2) does not include land described in (1) of this subsection for which  
13 a regional corporation organized under 43 U.S.C. 1606(a), as amended, a village  
14 corporation organized under 43 U.S.C. 1607(a), as amended, or a Native group that

1 qualifies for a land conveyance under 43 U.S.C. 1613(h)(2) or (3), as amended, has  
2 filed a valid selection application with the United States under 43 U.S.C. 1601 - 1641,  
3 as amended, if the selection of the corporation or group has not been rejected or  
4 relinquished.

5 (c) Subsection (b) of this section may not be construed to limit the director in  
6 the exercise of authority granted by AS 38.05.035(a)(12).

7 \* Sec. 2. APPLICABILITY TO MINING LOCATIONS ON STATE LAND ALSO  
8 SELECTED UNDER PROVISIONS OF THE ALASKA NATIVE CLAIMS SETTLEMENT  
9 ACT, AS AMENDED. Notwithstanding the exclusion of land from the definition of "state  
10 selected land" by AS 38.05.275(b)(2), added by sec. 1 of this Act, a mining location that was  
11 made on that land under AS 27.10 or AS 38.05.195 on or after April 14, 1966, and before the  
12 effective date of this Act retains its validity, if any, if the selection of the land by all  
13 corporations or groups eligible to make a selection under 43 U.S.C. 1601 - 1641 is rejected  
14 or relinquished.

15 \* Sec. 3. AS 38.05.275(b) and (c), added by sec. 1 of this Act, are retroactive to April 14,  
16 1966, and apply to locations made under AS 27.10.050 or AS 38.05.195 on and after that date.

17 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Proposed Amendments to  
CSHB 333( )  
8-LS1340X  
2/1/94

1. page 1, lines 7 – 11, delete all material and insert:

“(1) means land for which the state has filed a selection application with the United States under Sec. 6 of the Alaska Statehood Act, as amended, regardless of the validity or effect of the application, if the selection described in the application has not been rejected or relinquished;”

2. page 1, line 14 – page 2, line 1, delete all material and insert:

“corporation organized under 43 U.S.C. 1607(a), as amended, a Native group corporation that qualifies for a land conveyance under 43 U.S.C. 1613(h)(2), as amended, or a Native urban corporation that qualifies for a land conveyance under 43 U.S.C. 1613(h)(3), as amended, has”

3. page 2, line 11:

delete [AS 27.10 or AS 38.05.195]

insert “AS 38.05.185 – 38.05.275 or in the manner described in AS 27.10”

4. page 2, line 16:

delete [AS 27.10.050 or AS 38.05.195]

insert “AS 38.05.185 – 38.05.275 or in the manner described in AS 27.10”

**CSHB 333( )**  
**SECTIONAL ANALYSIS**

**"An Act amending the Alaska Land Act to define the term 'state selected land' for the purpose of recognizing mining locations, and giving retrospective effect to the amendment; and providing for an effective date."**

Section 1.

Amends AS 38.05.275 by adding two new subsections.

Subsection (b) defines the term 'state selected land' as follows:

- (1) land for which the state has filed a selection application with the United States under the Alaska Statehood Act regardless of the validity or effect of the application, so long as the selection has not been rejected or relinquished;
- (2) except land for which a Native corporation organized under ANCSA has filed a selection application so long as the application has not been rejected or relinquished.

Subsection (c) clarifies that the definition supplied in subsection (b) does not limit the authority of the director of lands to select, accept and secure land to the state.

Section 2.

Provides that the exception in AS 38.05.275(b)(2) for lands selected by a Native corporation organized under ANCSA does not invalidate an 'at risk' claim filed on that land between April 14, 1966 and the effective date of this Act.

Section 3.

Provides that the definition supplied in section 1 is retroactive to April 14, 1966, the effective date of the Act that established AS 38.05.275 in its current form.

Section 4.

Provides that the Act takes effect immediately under AS 01.10.070(c).

the original bill

**HB 333  
SECTIONAL ANALYSIS**

**"An Act amending the Alaska Land Act to define the term 'state selected land' for the purpose of recognizing mining locations, and giving retrospective effect to the amendment; and providing for an effective date."**

Section 1.

Adds a new sentence to AS 38.05.275 defining the term 'state selected land' to be land for which the state has filed a selection application with the United States regardless of the validity or effect of the application, so long as the application has not been denied.

Section 2.

Provides that the definition supplied in section 1 is retroactive to April 14, 1966, the effective date of the Act that established AS 38.05.275 in its current form.

Section 3.

Provides that the Act takes effect immediately under AS 01.10.070(c).

**ALASKA MINERALS COMMISSION**  
**1994 Report to the Governor**  
**and Alaska State Legislature**

**FINDING:** This recommended change to Title 38 will allow AS 38.05.275 to function as it was intended - to preserve some hope for a mineral claimant who makes a discovery on lands which happen to be unavailable under federal law due, in many cases, either wholly or partly to the existence of the state selection itself (because in most if not all cases the filing of a state selection segregates the land from federal location by virtue of either 43 CFR 2627.4(b) or the "notation rule", even if the state selection was invalid when made).

**THE COMMISSION RECOMMENDS THAT:**

*10. The legislature should amend AS 38.05.275/965 as follows:*

*Section 38.05.965. Definitions. ...*

*(21) "state selected land" means land for which the state has filed a selection application with the United States, regardless of the validity or effect of such application:*

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

General Background on Need for Amendment of AS 38.05.275

prepared by  
Joseph J. Perkins, Jr.  
GUESS & RUDD  
Anchorage, Alaska

Defining "state selected land" for purposes of AS 38.05.275 in the manner requested will allow AS 38.05.275 to function as it was intended—to preserve some hope for a claimant who makes a discovery on lands which just happen to be unavailable under federal law but which might become available under state law in the future if the state acquires the lands. In many cases, the lands are unavailable under federal law either wholly or partly due to the existence of the state selection itself, because in most if not all cases the filing of a state selection segregates the land from federal location by virtue of either 43 CFR § 2627.4(b) or the "notation rule", even if the state selection was invalid when made or is simply a top-filing.

Claims located under AS 38.05.275 are commonly referred to as "at-risk locations". If "state selected land" is not defined in the manner requested, then crafty lawyers working for "second-in-time" at-risk locators will be able to argue that their clients should defeat first-in-time at-risk locators because the first-in-time locators initiated their at-risk locations too early (i.e., before the state selection became valid). This potential result conflicts with the underlying policy in the mining law that "first-in-time" should prevail.

Perhaps three examples of the problems at-risk claimants face will illustrate why the proposed definition should be adopted, or none at all.

Example 1:

- 1974—lands closed to federal locations and to state selection
- 1977—invalid federal claims located
- 1978—invalid state selection filed (e.g., those filed on 11/14/78)
- 1978—at-risk state claims located after invalid state-selection
- 1979—lands made available for state selection under Statehood Act § 6(g) preference period (e.g., 1/79)
- 1979—valid reassertion of state selection filed (e.g., 2/79)

Who should win in a dispute between competing locators—the invalid federal locator or the potentially valid at-risk state locator? Clearly the at-risk state locator should win, and under the proposed definition he clearly will, without having to relocate his claims after the state makes a valid reassertion.

While one might think, at least initially, that the at-risk claimant in the foregoing situation should have to relocate his claims after a valid reassertion in order to be entitled to win, the following two examples show the difficulty with such a position.

Example 2:

- 1968—lands included in federal locations, some of which may have valid "marketability" discoveries and some of which may not (this is the typical situation for virtually

every large claim block held by any mining company); no one knows which is which, however

- 1978—invalid state selection filed (e.g., those filed on 11/14/78)
- 1979—lands made available for state selection under Statehood Act § 6(g) preference period (e.g., 1/79)
- 1979—reassertion of state selection filed (e.g., 2/79); this reassertion is valid as to those lands that were not included in valid federal claims and is invalid as to those lands that were included in valid federal claims; no one knows which is which, however
- 1980—ANILCA § 906(e) enacted
- 1981—ANILCA § 906(e) top-filing made; as was the case with respect to the 1979 reassertion, however, no one knows which lands are validly selected and which lands are only top-filed
- 1982—federal claimant, in the exercise of caution, locates state mining claims on top of his federal claims, to protect himself in case any of his federal claims are invalid

(NOTE: At-risk state claims usually are not co-extensive with the underlying federal claims, due to the cardinal direction location requirement for state claims. Also, the discovery requirement under state law is the prudent man test, whereas under federal law it is the marketability test. It is thus easier to establish a discovery under state law.)

Does the federal claimant now have valid at-risk claims? If so, as to which lands? Under the proposed definition of state selected lands, he has "valid" at-risk claims as to all lands. Under current law it may be argued that he has "valid" at-risk claims only as to lands within those of his unpatented federal claims that are then invalid. But no one knows which are which! This means that the federal claimant will be forced continually to relocate his at-risk claims in order to protect himself from potentially competing locators. Also, a federal claimant will be forced to relocate all of his at-risk claims upon any formal abandonment of the underlying federal claims, even though some or all of the underlying federal claims already may have been invalid (for lack of discovery or some other unnoticed paperwork deficiency) such that the state selection already may have attached to the land. This is a patently silly result.

With many claimants now considering abandoning their federal claims and relying on their at-risk claims on lands that have been selected by the state, these claimants need to know that their at-risk claims will be recognized without the need for relocation, so long as they located their at-risk claims after the state filed a selection application for the lands.

### Example 3:

- 1968—lands included in federal withdrawal
- 1980—ANILCA § 906(e) enacted
- 1981—ANILCA § 906(e) top-filing made
- 1991—owner of valid state claims on adjoining lands makes non-trespassory prudent man discovery on surface of lands in federal withdrawal and locates at-risk state claims;
- 1995—owner negotiates a federal/state/Native/borough/private land exchange to allow state to receive tentative approval to lands included in his at-risk claims

Should the at-risk claimant be placed in the position of not having his at-risk claims recognized because the state selection was a top-filing when he located his at-risk claims? No. Should he have to participate in a staking rush on the day the top-filing ripens into a valid state selection in order to make sure he is the first to locate valid at-risk claims? Of course not. The proposed changes makes clear that he would not need to do this. Under current law, the threat of a staking rush is so great that the claimant probably would not bother putting in the time and effort to bring about a land exchange—to the detriment of everyone.

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 333

Revision Date: \_\_\_\_\_  
Title: State-selected land for mineral location  
Sponsor: Kolt  
Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
BRU: \_\_\_\_\_  
Component: \_\_\_\_\_  
COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

This bill allows federal mining claims to be converted to state mining claims on "state-selected lands." It also allows the staking of new claims on state-selected lands." All claims staked under this provision will remain in question until land is conveyed to state. Should land not be conveyed to the state, or be conveyed to a Native corporation, the state claims will be invalid.

Prepared by: Al Clough, Development Specialist  
Division: Economic Development

Phone: 465-5463  
Date: 1/31/94

Approved by Commissioner: Paul Fuhs  
Agency: Commerce and Economic Development

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

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA

BILL NO. HB333

1994 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources  
 Title: "An Act amending the Alaska Land Act to define BRU: Resource Development  
the term 'state selected land' for the purpose of recognizing mining..." Component: Land Development  
 Sponsor: Representative Kott Mining Development  
 Requestor: Representative Kott Component Serial No. 431/442

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY94) cost: \$ None

POSITIONS

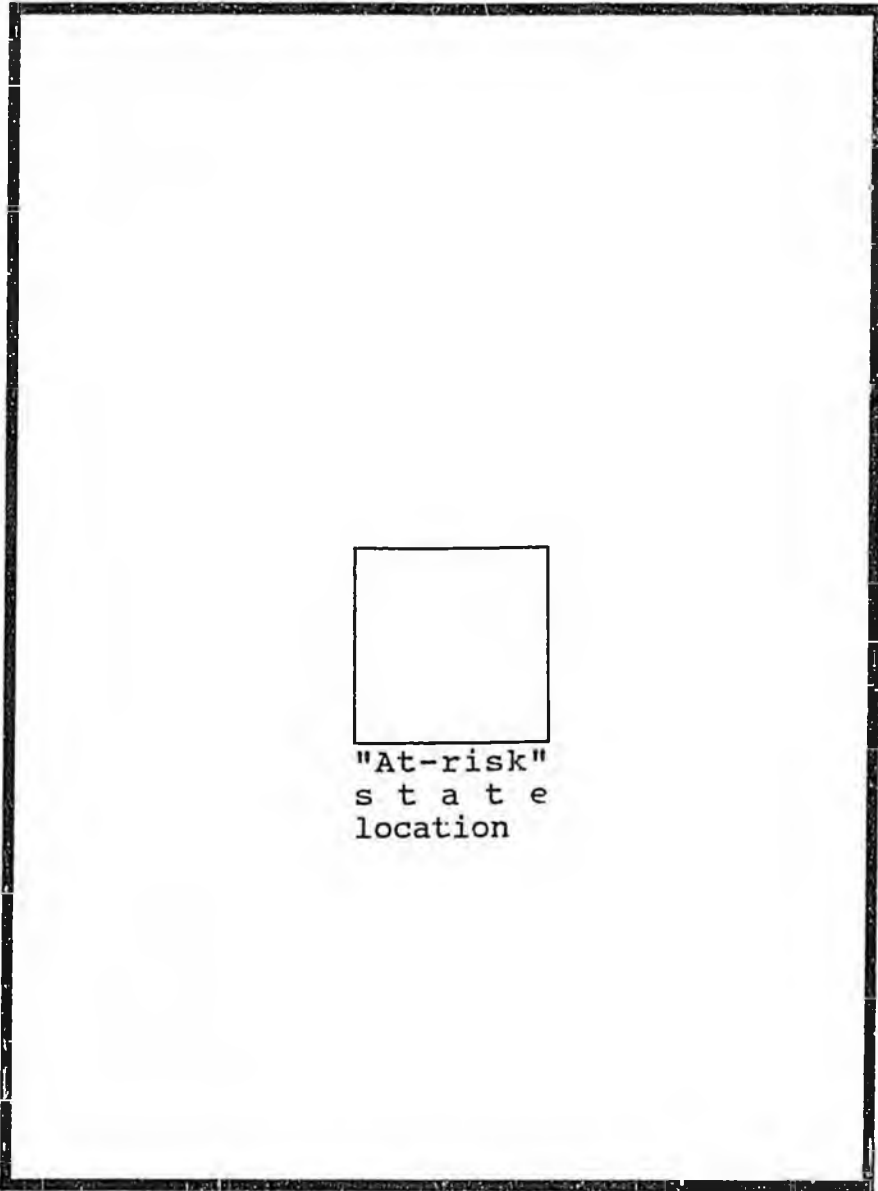
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

There is no anticipated fiscal impact to DNR associated with this bill.

Prepared by: Jerry Gallagher, Legislative Liaison Phone: 465-2400  
 Division: Commissioner's Office Date: 2-Feb-94  
 Approved by Commissioner: Harry A. Noah Date: 2-Feb-94  
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE



"At-risk"  
state  
location

State selection, Alaska Statehood Act, § 6.



HOUSE RESOURCES COMMITTEE

DATE: 2/9/94

PLACE: Capitol, Room 124

**SUBJECT OF MEETING:**  
 HB 333 - MINING LOCATIONS ON STATE SELECTED LAND  
 HJR 50 - NPFC COMPREHENSIVE RATIONALIZATION PLAN

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Jack Phelps	Rep. Kott	Rm 409		3	3777	<input checked="" type="radio"/>	N	HB 333
REPRESENTATIVE MUSES		Room 204			6348	<input checked="" type="radio"/>	N	HJR 50
Rick Lamber		34 Highland Dr. Juneau				Y	N	HJR 50
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	