

**HB**

**462**

(9)

Date Referred: February 11, 1994

FURTHER REFERRALS:

Date of Committee Action: 3/18/94

The RESOURCES Committee considered:  
HOUSE BILL NO. 462

HB 462

MINING REQUIREMENTS:RECORDING/LABOR/SIZE

"An Act repealing certain provisions of the laws, other than those in the Alaska Land Act, relating to recording requirements, labor and improvement requirements, and size requirements for mining claims and providing for the suspension or waiver of state annual mining labor requirements when the federal government has suspended or waived federal annual mining labor requirements administratively or by statute; and providing for an effective date."

RECOMMENDATIONS:  the same title  
be replaced with \_\_\_\_\_  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 <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hudson</i> Hudson	<input checked="" type="checkbox"/>	<i>Carol Hehl</i> Finkelstein		<input checked="" type="checkbox"/>	
<i>Joseph Green</i> Green	<input checked="" type="checkbox"/>				
<i>John James</i> James	<input checked="" type="checkbox"/>				
<i>Alan Mulder</i> Mulder	<input checked="" type="checkbox"/>				
<i>Alan Burde</i> Burde	<input checked="" type="checkbox"/>				
<i>W.F. Williams</i> Williams	<input checked="" type="checkbox"/>				

*W.F. Williams*  
CHAIRMAN'S SIGNATURE

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT

P.O. Box 55326  
North Pole, Alaska 99705  
(907) 481-0862

Home District 33



Alaska State Capitol  
200 South Steese  
Juneau, Alaska  
99801-1182  
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## House Of Representatives

Sponsor Statement for HB 462  
Mining Requirements: Recording/Labor/Size  
by Rep. Gene Therriault  
February 25, 1994

Title 27 deals with mining claims on federal land where the overriding authority rests with the federal laws and regulations. Much of the language contained in Title 27 dates back to territorial days when it was crafted to match the federal requirements in place at that time. However, over time these federal requirements have changed and unfortunately our state statutes have not kept pace and in many instances no longer conform. This lack of conformity is currently causing confusion and must be updated.

I have attached a letter of support from the Department of Natural Resources which identifies the specific problem that each section of HB 462 is designed to correct.

udes both banks of a  
nt law, see AS 46.15.]

Public Domain.

claims by agent or attor-

labor or improvements  
on placer claims  
violation of law is void

ious-metal placers  
placer deposits con-  
minerals. (§ 47-3-85

es and Minerals, §§ 46, 49

placer claims. The  
no single or individ-  
of 20 acres nor have  
of placer ground lies  
claims the restriction  
(49)

as to excess ground. —  
n. whether lode or placer,  
ground than allowed by  
it be held void as to the  
McIntosh, 1 Alaska 286,  
(9th Cir. 1903).

ade in good faith and  
rmable to law is not  
void by reason of an  
ut the excessive area only  
v. Hammer, 170 F. 31 (9th  
S. 85, 32 S. Ct. 187, 56 L.  
; Jones v. Wild Goose  
ig Co., 177 F. 95 (9th Cir.

at liberty to select por-  
e will reject as excess.  
unchion, 161 F. 859 (9th  
ay v. Hammer, 170 F. 31

(9th Cir.), aff'd, 223 U.S. 85, 32 S. Ct. 187,  
56 L. Ed. 359 (1909); Adams v. Yukon Gold  
Co., 251 F. 226 (9th Cir. 1918).

And until he has notice and opportu-  
nity to cast off excess the claim is not  
subject to relocation. Jones v. Wild  
Goose Mining & Trading Co., 177 F. 95  
(9th Cir. 1910); Adams v. Yukon Gold Co.,  
251 F. 226 (9th Cir. 1918).

Accidental inclusion of excess does  
not invalidate location unless excess  
very great. — Embracing by accident  
more than the lawful quantity of ground  
within a location has never been held,  
unless the excess was very great, to inval-  
idate the location. Pratt v. United Alaska  
Mining Co., 1 Alaska 95.

Scheme for acquisition of more than  
20 acres is fraud. — Any scheme or  
device entered into whereby one individ-  
ual is to acquire more than 20 acres or  
proportion in area constitutes a fraud upon  
the law, and consequently a fraud upon the  
government, from which the title is to be  
acquired. Nome & Sinook Co. v. Snyder,  
187 F. 385 (9th Cir. 1911).

And any location made in pursuance  
of such a scheme or device is without  
legal support and void. Nome & Sinook  
Co. v. Snyder, 187 F. 385 (9th Cir. 1911).

Use of dummy locators to secure

interest in excess of 20 acres is viola-  
tion of law. — The scheme of using the  
names of dummy locators in making the  
location of a mining claim for the purpose  
of securing a concealed interest in such  
claim appears to be contrary to the purpose  
of the statute; but when this scheme is  
used to secure an interest in a claim for a  
single individual, not only concealed but  
in excess of the limit of 20 acres, it is  
plainly in violation of the letter of the law.  
Cook v. Klonos, 164 F. 529 (9th Cir. 1908).

And when all the locators have  
knowledge of the concealed interest  
and are parties to the transaction, it  
renders the location void. Cook v.  
Klonos, 164 F. 529 (9th Cir. 1908).

Location and staking of excess by  
third person. — One claiming the right to  
make entry of a placer mining claim the  
boundaries of which contain an area in  
excess of the amount allowed by law,  
under permission of the owners thereof to  
stake the excess, should first determine  
the amount of such excess and stake the  
same in such manner that the original  
location thus reduced in area will not con-  
tain an additional course. Adams v. Yukon  
Gold Co., 5 Alaska 391, aff'd, 251 F. 226  
(9th Cir. 1918).

**Sec. 27.10.110. Limits on size of association claims.** No associa-  
tion placer mining claim may be located in excess of 40 acres, and have  
a greater length than 2,640 feet. (§ 47-3-88 ACLA 1949)

NOTES TO DECISIONS

Fraudulent conduct of one locator  
should not invalidate entire associa-  
tion location. — Where a location is made  
by an association of locators, there is no  
reason why the fraudulent and concealed

conduct of one of the locators in an associa-  
tion claim should invalidate the entire  
location. Rooney v. Barnette, 200 F. 700  
(9th Cir. 1912).

**Sec. 27.10.120. Location of claims by agent or attorney.** A per-  
son may not locate a placer mining claim as agent or attorney for  
another unless authorized to do so by a power of attorney in writing,  
acknowledged and executed within four years before the date of loca-  
tion, and recorded in the office of the recorder of the recording district  
in which the claim is located. A person may not act as attorney in fact  
for more than two principals in any one recording district. (§ 47-3-90  
ACLA 1949; am § 2 ch 73 SLA 1961)

**Sec. 27.10.160. Affidavit of labor or improvements.** Within 90 days after September 1 of each year the owner of a mining claim, or some other person having knowledge of the facts, shall make and record with the recorder for the district in which the claim is located, an affidavit showing the performance of labor or the making of improvements. The affidavit must contain:

(1) the name or number of the mining claim and where situated;  
(2) the number of days' work done and the character and value of the improvements made;

(3) the date of the performance of the labor and of the making of improvements;

(4) at whose instance the work was done or the improvements made;

(5) the actual amount paid for the work and improvements, and by whom paid, when the work was not done by the owner or the lessee of the owner. (§ 47-3-53 ACLA 1949; am § 2 ch 26 SLA 1960)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 under sec. 42, ch. 161, SLA 1988.

**Sec. 27.10.170. Effect of recording and of failure to record affidavit of labor or improvements.** An affidavit recorded under AS 27.10.160 is prima facie evidence of the performance of the work or of making the improvements stated in it. If the assessment work affidavit is not recorded within six months after the close of the assessment work year the claim is abandoned and is subject to relocation by another person. However, compliance with AS 27.10.010 — 27.10.070 and 27.10.150 — 27.10.190 before a relocation saves the rights of the last locator, claimant or owner of a forfeited claim. If a claim is not relocated by another person within one year after a forfeiture, the last locator, claimant or owner of the forfeited claim may return to the forfeited claim and relocate it as though it had never been located. (§ 47-3-55 ACLA 1949; am § 1 ch 105 SLA 1957)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 under sec. 42, ch. 161, SLA 1988.

**Sec. 27.10.190. Recording the notice to contribute and affidavits.** (a) Within 120 days after personal service, or within 120 days after the completion of publication of the notice provided for in AS 27.10.180, the co-owner who claims the forfeiture shall record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

(1) an affidavit of the person serving the notice giving the time, place and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer or foreman of the newspaper



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

March 8, 1994

Honorable William Williams  
Chairman  
House Resources Committee  
State Capitol  
Juneau, AK 99811

RE: HB-462, Aligning State Mining Law to Federal Law Changes

Dear Representative Williams,

The Alaska Miners Association wishes to go on record in support of House Bill 462 which will bring the state mining law into agreement with changes that have been made to the federal mining law over the past many years.

Some aspects of the state mining law deal with recording, maintaining of paperwork, rules for filing and re-staking of federal mining claims, etc. that no longer agree with the federal law. The changes proposed by HB-462 are needed to eliminate confusion and uncertainty that may otherwise develop between the federal mining law and the state law. The differences between state mining law and federal law may otherwise result in the inadvertent loss or invalidation of rights. It may also result in unnecessary litigation between mining claimants.

Some examples would include provisions that are allowed by state law but no longer have relevance. One example is the state limitation on the size of association placer claims. This type of claim is no longer allowed by the federal law and yet state law addresses the issue and could be a source of confusion to a miner that did not know the federal law had been changed. Another example is that state law requires recording an affidavit of annual labor within 6 months of the end of the labor year, whereas the federal law requires such affidavit be recorded within 90 days of the end of the labor year. The more restrictive federal law will prevail and the state requirement now only adds confusion. These provisions can be a serious pitfall when they have been superseded by a more restrictive federal law.

The changes proposed in HB-462 will help remove one more item of uncertainty for those wishing to invest in mineral exploration and development in Alaska. We urge its passage.

If you have any questions regarding this bill please contact me.

Sincerely,

Steven C. Borall, P.E.  
Executive Director

cc: Representative Therriault

**DEPARTMENT OF NATURAL RESOURCES**

**DIVISION OF MINING**

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-3400  
FACSIMILE: (907) 586-2954

Feb. 25, 1994

The Honorable Gene Therriault  
Alaska House of Representatives  
Capitol Building, Room 421  
Juneau, Alaska 99801

Re: HB 462

Dear Representative Therriault:

The Department of Natural Resources supports HB 462, an Act which will bring Alaska Statute 27.10 specifying certain state requirements for federal mining claims in Alaska into conformity with the federal requirements. The federal requirements take precedent over any state requirements and update of this chapter will eliminate confusion and potential litigation among mining claimants.

Specifically, section 1 deletes an out of date provision that is in direct conflict with federal mining law. Although the existing language allows recording of location notices after 90 days but before the ground is staked by another locator, federal law no longer allows such late recording under any circumstances. This deletion conforms AS 27.10 to current federal requirements.

Section 2 adds language to clarify that should federal requirements be changed by administrative action, the requirements of AS 27.10 are likewise affected. In the past year, the BLM by administrative action allowed federal miners to waive annual labor if an annual rent payment was made. However, this section of the statute created confusion in Alaska because miners were not sure if this was an act of law covered by AS 27.10.150(c). This change will end such confusion.

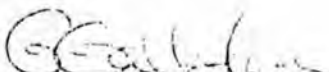
Section 3 deletes an out of date requirement for the recording of an annual labor affidavit within 6 months after the close of the annual labor year. Federal law requires such affidavits be recorded within 90 days of the close of the labor year. This deletion will again conform Alaska law to federal law.

Section 4 repeals the limitation on the size of association placer claims. This limitation is simply inconsistent with federal law.

Section 5 is necessary to be sure the changes made in Section 2 may be applied to those miners inadvertently caught in the conflicting state and federal laws in effect on August 31, 1993.

Please contact me if you have any questions.

Sincerely,

  
Gerald Gallagher  
Director

# FISCAL NOTE

STATE OF ALASKA

BILL NO. HB462

1994 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources  
 Title: "An Act repealing certain provisions of the laws, BRU: Resource Development  
other than those in the Alaska Land Act, relating to recording..." Component: Mining Development  
 Sponsor: Representative Therriault  
 Requestor: Representative Therriault Component Serial No. 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

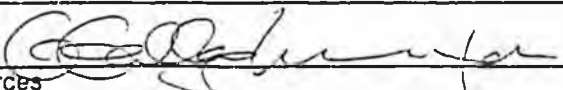
Estimate of any current year (FY94) cost: \$ None

**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)

This bill provides modifications to state law as related to mining claim recording requirements, labor and improvement requirements, and size requirements, so that state law corresponds to recent changes in federal law.

Prepared by: Jerry Gallagher, Director Phone: 465-2400  
 Division: Mining Date: 25-Feb-94  
 Approved by Commissioner: Harry A. Noah  Date: 25-Feb-94  
 Agency: Natural Resources

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HOUSE RESOURCES COMMITTEE

DATE: 3-18-94

PLACE: Capitol, Room 124

SUBJECT OF MEETING:  
 HB 446 - Environmental Conservation Agreements  
 HB 462 - Mining Requirements: Recording, Labor/Size  
 HB 352 - Subdivision Plat Approval: Unorganized Bor.

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Mead Treadwell	ADEC	410 Willoughby Ave, Ste 105/Juneau	99801	364 3430	465 5665	(Y) N	446.
JERRY GALLAGHER	DWR				465-2400	(Y) N	462
Don Swanson	DWR				262-2692	(Y) N	352
RICK HARRIS	SEAPASIA	ONE SEAPASIA PLAZA SUITE 400	99801	<del>586-1512</del> 784-3909	586-1512	(Y) N	352
MARY A. NEESACE	AMA	P.O. Box 21211 JUNEAU 99802			586-3340	(Y) N	462
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	