

HB

333

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB333(RES)

1994 LEGISLATIVE SESSION

Revision Date:	<u>14-Feb-94</u>	Dept Affected:	<u>Natural Resources</u>
Title:	<u>"An Act amending the Alaska Land Act to define the term 'state selected land' for the purpose of recognizing mining..."</u>	BRU:	<u>Resource Development</u>
Sponsor:	<u>Representative Kott</u>	Component:	<u>Land Development</u>
Requestor:	<u>Representative Kott</u>		<u>Mining Development</u>
		Component Serial No.	<u>431/442</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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JND SOURCE (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

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:	<u>Jerry Gallagher, Legislative Liaison</u>	Phone:	<u>465-2400</u>
Division:	<u>Commissioner's Office</u>	Date:	<u>14-Feb-94</u>
Approved by Commissioner:	<u>Harry A. Noah</u>	Date:	<u>14-Feb-94</u>
Agency:	<u>Natural Resources</u>		

Alaska State Legislature
House of Representatives

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INTERIM:
EAGLE CENTER, STE 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. This is necessary to ensure that existing federal claims can be converted to state claims once the land is conveyed to the state.

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.

Alaska's mining industry provides an important part of the state's total employment. Alaska's interest in sound and appropriate development of Alaska resources will be well served by passage of House Bill 333.



**CSHB 333(RES)
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 on or after April 14, 1966, and before 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).

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.

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.



ALASKA MINERS ASSOCIATION, INC.

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

February 8, 1994

Honorable Pete Kott
Alaska State Representative
State Capitol
Juneau, AK 99801

RE: HB-333, Definition of State Selected Land

Dear Representative Kott,

The Alaska Miners Association wishes to go on record in support of HB-333 and more precisely in support of the draft Committee Substitute of this bill. This is an important piece of legislation that will facilitate and simplify transfer of valuable mineral lands to ownership by the State of Alaska and add a measure of security and certainty for certain mining claim holders.

The need for this bill arises from the fact that some federal lands covered by federal mining claims have State selections over them and the federal claim holder would prefer to have the state as landowner so he(she) could have state mining claims rather than federal mining claims. The State wants the land and has selected it because of its mineral potential and the federal claim holder wants the State to have the land, provided he(she) can establish a state mining claim on the land.

The federal claim holder, however, needs the certainty that if he(she) relinquishes his(her) federal claim rights and the land actually becomes state property, he(she) will have the state mining claim(s) with the earliest date and the legal rights and obligations associated with that earliest date. Nothing can force the federal claim holder to relinquish the federal mining claims if this is not his(her) desire. However, if the claim holder prefers to operate under State law and have State mining claims, this bill will provide an added measure of certainty that will allow him(her) to relinquish the claim(s). Under this bill, the person with the earliest rights under federal law will be able to relinquish these rights knowing that he(she) will have the earliest rights under State law.

The draft Committee Substitute will also remove any ambiguities where valid ANCSA selections and State selections exist for the same area.

We support the draft Committee Substitute to HB-333 and see this bill as a case where the State of Alaska will be able to obtain title to lands it may otherwise not receive and at the same time add certainty for the claim holder. If there is anything we can do to assist in seeing this bill become law please contact me.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Commissioner Harry Noah

LETTER OF SUPPORT