

HB

331



ALASKA MINERS ASSOCIATION, INC.

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

April 16, 1996

Honorable Joe Green
Honorable William Williams
Co-Chairmen, House Resources
Capitol Building
Juneau, AK 99801

RE: HB-331, Relating to Damages and Posting of Bond

Dear Representatives Green and Williams,

The Alaska Miners Association wishes to go on record in support of HB-331. This bill will clarify existing statute by establishing in statute the current interpretation and practice followed by the Department of Natural Resources and by industry.

The change to HB-331 is needed to insure the rights of the State to its subsurface mineral resources where the surface estate has been sold or otherwise transferred to a third party. Under the Statehood Act, the State cannot sell or dispose of its mineral resources but rather must retain all such mineral resources in State ownership. Therefore, whenever an interest in the surface estate is sold or disposed of, the State retains the subsurface mineral estate.

Unless specifically closed to mineral entry this land is still available for staking of mining claims. It has been the interpretation and practice of the State that claim staking is the only activity that can be allowed on the land without getting permission from the third party surface estate owner.

HB-331 will merely clarify this statute and make it clear that a bond is not needed if the only activity that occurs is claim staking.

We would suggest one change to HB-331. This change is to make HB-331 retroactive to Statehood for existing mining claims. This has been the State interpretation and practice, and existing, as well as new, mining claims should therefore be covered by it.

We urge that this bill be passed this Session.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Gene Therriault
House Resources Committee Members

Alaska State Legislature



House Of Representatives

REPRESENTATIVE
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX: (907) 488-4271

While in Session
State Capitol
Juneau, Alaska
99801-1182
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House District 33

HB 331 "An Act relating to Mining."

SPONSOR: Rep. Gene Therriault *Gene*

SPONSOR STATEMENT:

HB 331 clarifies that the act of staking a mining claim does not require permission of the surface owner or require bonding where the surface is no longer owned by the state. This ambiguity has the potential of involving the department in resolving disputes from the mere act of staking. HB 331 helps to avoid these potential future costs to the department.

Alaska State Legislature

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House District 33

MEMORANDUM

TO: Representative Joe Green, Co-Chair ✓
Representative Bill Williams, Co-Chair
House Resources Committee

FROM: Representative Gene Therriault *Gene*

DATE: April 11, 1996

SUBJECT: Scheduling of HB 331

I respectfully request House Bill 331, "An Act relating to Mining" be scheduled for a hearing in the House Resources Committee.

House Bill 331 would clarify that the mere act of staking a state mining claim does not require permission of the surface owner or require bonding where the surface is no longer owned by the state.

A copy of HB 331, the sponsor statement and the DNR fiscal note from last year are attached. I appreciate your consideration of my request.

attachments (3)

Alaska State Legislature

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House District 33

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attachments (3)

Sec. 38.05.128. Obstructions to navigable water. (a) A person may not obstruct or interfere with the free passage by a member of the public on any navigable water as defined in AS 38.05.965 unless the obstruction or interference is

- (1) authorized by a federal or state agency;
- (2) authorized under a federal or state law or permit;
- (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
- (4) caused by the normal operation of freight barging that is otherwise consistent with law; or

(5) authorized by the commissioner after reasonable public notice.

(b) A violation of (a) of this section is a class B misdemeanor.

(c) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.

(d) This section may not be construed to affect or abridge valid existing rights. (§ 2 ch 82 SLA 1985)

Cross references. — For legislative findings and purpose in connection with the 1985 enactment of this section, see § 1, ch. 82, SLA 1985 in the Temporary and Special Acts.

Sec. 38.05.130. Damages and posting of bond. Rights may not be exercised by the state, its lessees, successors or assigns under the reservation as set out in AS 38.05.125 until the state, its lessees, successors, or assigns make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option, contract or lease for mining coal or lease for extracting geothermal resources, petroleum or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner payment for damages, and may institute legal proceedings in a court where the land is located, as may be necessary to determine the damages which the owner may suffer. (§ 2 art VII ch 163 SLA 1959; am § 15 ch 61 SLA 1960; am § 3 ch 175 SLA 1980)

Article 6. Leasing of Mineral Land.

<p>Section 135. Generally 137. Leasing agreements 140. Limitations 145. Leasing procedure 150. Coal</p>	<p>Section 155. Phosphates 160. Oil shale 165. Sodium 170. Sulphur 175. Potassium</p>
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FISCAL NOTE

STATE OF ALASKA

BILL NO. HB331

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: "An Act relating to mining." BRU: Resource Development
 Component: Mining Development
 Sponsor: Representatives Therriault, Kelly
 Requestor: _____ Component Serial No. 442

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
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
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

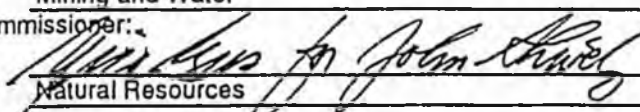
FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
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)

SEE ATTACHED.

Prepared by: Jules Tileston, Director Phone: 762-2165
 Division: Mining and Water Date: 9-May-95
 Approved by Commissioner:  Date: 5-9-95
 Agency: Natural Resources

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**FISCAL NOTE
HB 331 ATTACHMENT**

ANALYSIS

AS 38.05.130 requires an agreement for damages, or a surety bond, with respect to the exercise of the reserved mineral rights under AS 38.05.125. AS 38.05.125 is silent with respect to claim staking. A recent Superior Court ruling found that "staking" could not take place without the "consent" of the surface owner when the surface estate is no longer in State ownership. AS 38.05.130 further provides that under certain circumstances the director will determine the proper amount of a surety bond to protect the surface owner.

HB 331 makes it clear that the mere act of staking a state mining claim does not require permission of the surface owner or require bonding where the surface is no longer owned by the State. This ambiguity has resulted in litigation that has lasted more than 12 years and is now in the Supreme Court. Resolving this uncertainty by making it clear that staking does not require permission of the surface owner or the potential involvement of the department in resolving disputes on the potential damages from the act of staking has a positive impact by avoiding some future long-term annual costs to the department.

The bill may result in a cost avoidance of potential future expenses, not a reduction to current operating expenditure levels. If this bill is not implemented, costs associated with the resolution of disputes will become increased expenses to the operating budget, requiring additional funding and personnel. Unless corrected, the costs associated with staking of mining claims where the State is no longer the surface owner could increase in direct proportion to the amount of State land transferred into private ownership.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 331

Revision Date: 15-Apr-96 Dept Affected: Natural Resources
 Title: An Act relating to Mining BRU: Resource Development
 Component: Mining Development
 Sponsor: Rep. Theriault, Kelly
 Requestor: House Resources Component Serial No. 442

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
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
CHANGE IN REVENUES ()	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						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ None

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
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)

HB 331 amends AS 38.05.130 to exempt posting the corners of a mining claim from the requirements of an agreement for damages or a surety bond. A recent Superior Court ruling found that "staking" could not take place without the "consent" of the surface owner when the State does not own the surface. To avoid future questions about the validity of a past staking of State minerals at a time when the State had transferred the surface to non-State ownership, an amendment is recommended to make the effect of HB 331 retroactive to Statehood.

HB 331 may result in a significant, unquantified cost avoidance of potential future expenses by making it clear that owner consent is not necessary to post the corners of a mining claim. The bill removes an unfunded element that only has recently become a potential work load. Therefore, there would be no reduction to current DNR operating expenditure levels.

Prepared by: Jules Tileston, Director Phone: 269-8625
 Division: Mining & Water management Date: 15-Apr-96
 Approved by Commissioner: [Signature] Date: 15-Apr-96
 Agency: Natural Resources