

HB

439



Representative Tom Brice
ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

M E M O R A N D U M

To: Representative Joe Green, Co-Chair
House Resources Committee

From: Representative Tom Brice 

Date: January 31, 1996

Re: HB 439: An Act relating to minerals, including coal, to the statewide bonding pool for the reclamation activities imposed on mining operations, and to the statewide bonding pool's use for surface coal mining projects.

I would appreciate your scheduling HB 439 for a hearing before the Resources Committee at your earliest convenience.

Different mining interests in Alaska are required to provide performance bonding under two different sections of AS Title 29. AS 29.19.040 requires the commissioner to establish a bonding pool as an alternative to individual performance bonds, describes deposits and fees the commissioner shall collect, and gives the commissioner the option of utilizing the pool in the Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA), AS 29.21.160, bonding requirements. Although this option exists, and its exercise would serve to strengthen the solvency and viability of the bonding pool with the addition of a large contributor to the pool, the commissioner has not exercised the option to date.

HB 439 more firmly establishes the link between sections 19 and 21 in Title 29 by requiring the commissioner to allow of the reclamation bonding pool to meet the requirements of the ASCMCRA. The net result of enacting HB 439 will be a stronger reclamation bonding pool for mining interests as a whole in Alaska, achieved by more strongly linking reclamation program bonding provisions established in Title 29.

Thank you for your consideration.



Representative Tom Brice

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Representative Tom Brice
HB 439 Sponsor Statement

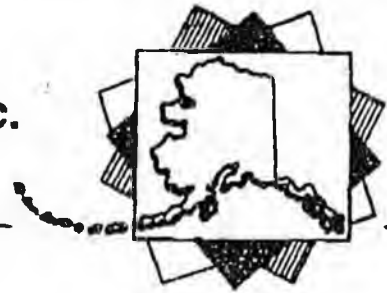
Currently, mining interests in Alaska are required to provide performance bonding under two different sections of AS Title 29. AS 29.19.040 requires the commissioner to establish a bonding pool as an alternative to individual performance bonds, describes deposits and fees the commissioner shall collect, and gives the commissioner the option of utilizing the pool in the Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA), AS 29.21.160, bonding requirements. Although this option exists, and its exercise would serve to strengthen the solvency and viability of the bonding pool with the addition of a large contributor to the pool, it has not been exercised to date.

HB 439 more firmly establishes the link between sections 19 and 21 in Title 29 by requiring the commissioner to allow of the reclamation bonding pool to meet the requirements of the ASCMCRA, and providing for that use in the ASCMCRA. The net result of enacting HB 439 will be a stronger reclamation bonding pool for mining interests as a whole in Alaska, achieved by more strongly linking reclamation program bonding provisions established in Title 29.

The bill directs the Governor to create an advisory board charged with the review of, and revision as needed to, the Alaska Surface Coal mining Control and Reclamation program. This will help ensure the Alaska Coal Program's constructive implementation of the federal Surface Coal Mining Control and Reclamation Act through ASCMCRA. This in turn maintains state regulation of these activities, rather than federal regulation.

David S. Manzer
President
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FAX 563-8083

Alaska Land Status, Inc.



February 1, 1996

Representative Tom Brice
State Capitol
Juneau, AK 99801-1182
Fax: 465-2294

Via Telefax

Re: HB 438 & HB 439

Dear Representative Brice:

I am Co-Chairman of the State Oversight Committee of the Alaska Miner's Association. Our committee met today and discussed HB 438 and HB 439 which you sponsor. We support both bills as currently drafted.

Thank you for your support of the mining industry. If you have any questions regarding our discussion of these bills please call me or Steve Borell, our Executive Director.

Sincerely,

A handwritten signature in cursive script that reads "David S. Manzer". The signature is written in black ink and is positioned below the word "Sincerely,".

David S. Manzer

cc: Steve Borell
Rich Hughes
Bob Stiles



Charlie Boddy

Vice President Of Governmental Relations

January 31, 1996

Representative Tom Brice
Alaska State Legislature
Capitol Building - Room 3466
Juneau, Alaska 99801-1182

Subject: HB 439 State Bonding Pool Amendments

Dear Representative Brice:

Usibelli Coal Mine Incorporated (UCM) wishes to thank you and your staff for the attentive effort which resulted in the introduction of HB 439. Allowing surface coal mining owners and operators guaranteed access to the State's bonding pool, secures a new source of bonding for the reclamation programs required by certain regulatory agencies.

The Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA) of 1982 allows successful permit applicants various types of reclamation bonding as an option to insure successful reclamation of mined properties. Collateral, surety and self bonding mechanisms are provided for under the ASCMCRA statute (AS 27.21). Unfortunately, more than a decade after the passage of ASCMCRA, the self bonding regulations are not yet approved or available for use by coal mine permit applicants. Additionally, surety bonding companies have been disinclined to make bonding available in a state where only one coal mine is in production. The limitations forced upon our fledgling industry are quickly apparent, and other avenues for bonding are needed and appreciated.

HB 439 also addresses an earlier recommendation of the Mineral Commission to create a surface coal mining advisory commission. The commission will act as a liaison between the state legislature, administration, the federal Office of Surface Mining Reclamation and Enforcement (OSMRE), and the regulated community. The regulated community in this instance are those individuals or mining companies with a vested interest in state leases, private lands, or native lands.

USIBELLI COAL MINE, INC. ♦ 122 First Avenue - Suite 302 ♦ Fairbanks, Alaska 99701
Telephone 907-452-2625 ♦ Facsimile 907-451-6545

Although the current legislation directs the governor to make all nine of the appointments, the legislature may want to consider making a select number of appointments themselves. The legislature may also want to consider making the chairperson of the Senate and House Resource Committees ex-officio members of the proposed commission.

After comparing opinions with Bob Stiles, president of the Alaska Coal Association, we believe a two year life for the newly formed commission would be adequate. At the national level, Wyoming Representative Barbara Cubin has introduced special legislation (H.R. 2372) that will allow states such as Alaska, who have primacy to regulate surface coal mining, the ability to manage their state tailored program with diminished interference from the OSMRE.

One of the tasks the commission could work on clarifying would be the relationship of the state and federal agencies in applying the regulations developed for use in the coterminous United States, to the unique environment we experience here in Alaska. A documented study performed by the National Research Council pursuant to section 708 of PL 95-87 (the federal Surface Coal Mining Control and Reclamation Act of 1977) could also be reviewed and utilized to identify necessary changes to render the ASCMCRA more effective and workable on a regional basis. This 328 page investigation was authored by members selected from the National Academy of Sciences and the National Academy of Engineering. The undertaking was chaired by a distinguished Alaskan, Dr. Earl H. Beistline.

Arctic mining will always present numerous challenges and opportunities for those with the intestinal fortitude to participate in this segment of the Alaska economy. Your responsible efforts to assist our industry have always been appreciated. Thank you for preparing such forward thinking legislation. With best regards, I remain,
Sincerely,



Charlie Boddy

cc: The Honorable Loren Leman, Alaska State Senate
Steve Borell, AMA
Bob Stiles, ACA
Becky Gay, RDC

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB439

Revision Date: Original Dept Affected Natural Resources
 Title: Mining bonding pool & coal advisory BRU: Resource Development
 commission _____ Component: Mining Development
 Sponsor: Brice, Kelly
 Requestor: H-RES Component Serial No. 442

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	50.0	50.0	50.0	50.0	50.0	50.0
TRAVEL	17.0	17.0	17.0	17.0	17.0	17.0
CONTRACTUAL	8.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	75.0	75.0	75.0	75.0	75.0	75.0
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	75.0	75.0	75.0	75.0	75.0	75.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	75.0	75.0	75.0	75.0	75.0	75.0

Estimate of any current year (FY96) cost: \$ _____

POSITIONS

FULL-TIME	0.7	0.7	0.7	0.7	0.7	0.7
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Commission's travel	\$ 17.0
Salaries professional and administrative staff support of Commission	\$ 50.0
Contractual includes the cost of printing and publishing the annual report	\$ 8.0

Prepared by: Jules Tileston, Director *[Signature]* Phone: 269-8625
 Division: Mining & Water Management Date: 2-Feb-98
 Approved by Commissioner: *[Signature]* Date: 2-2-98
 Agency: Natural Resources

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

COAL ISSUES

FINDING: In 1990 the Alaska State Legislature passed into law a new statute to ensure reclamation occurred during and after mining on state, federal, municipal, and private land and water. In 1982 the Legislature passed a similar law regarding surface coal mining operations in Alaska. These two programs offer various reclamation bonding mechanisms to companies and individuals engaged in mining activities. A primary difference exists, however, in that coal mining operations are currently not able to participate in the State's bonding pool. A change in statute is advocated to allow for participation, if desired, of all mining companies and individuals in the State's bonding pool.

THE COMMISSION RECOMMENDS THAT:

- 9. The Governor should direct the Commissioner of Natural Resources to prepare necessary changes to AS 27.19.010(c) and AS 27.19.040(b) to allow for the inclusion of all mining companies and individuals in the State of Alaska's reclamation bonding pool.*

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Secretary: Charles P. Boddy
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ALASKA COAL ASSOCIATION

Representative Tom Brice
Alaska State Legislature
Capitol Building - Room 3466
Juneau, AK 99801-1182

Subject: HB 439 State Bonding Pool Amendments

Dear Representative Brice:

The Alaska Coal Association is in full support of HB 439.

As I am sure you are aware surface coal mining was never excluded from the state bonding pool and it was always intended that, after the state bonding pool had been in place for sometime, surface coal mining would be specifically included. Your bill clearly implements this intent.

The following is a summary listing of why we believe that passage of this bill would represent a win-win situation all-around:

- No western coal producer has ever defaulted on a reclamation bond. Thus, sureties would be consider low risk and as such may reduce the overall risk profile of the state pool.
- HB 439 would have no effect on the level of bonding required for surface coal mine reclamation. Surface coal mining related statutes and regulations require that the bond value's be directly related to the estimated cost of reclamation, as a result typical surface coal mine reclamation bonds are usually in the \$1,000's/acre
- Because of the typically higher reclamation bond values associated with surface coal mining the overall asset value of and income to the state pool would increase substantially with no increase in the risk profile.
- Finally as you are aware obtaining bonding for mine developments in Alaska is a difficult, costly and sometimes impossible proposition. This is as true for surface coal mining as for any other type mining. HB 439, by explicitly including surface coal mining, assures that reclamation bonding would be available for Alaska developments and operations.

The Alaska Coal Association appreciates you and your staffs efforts to introduce this legislation which implements recommendations of the Minerals Commission. We believe the addition of surface coal mining to the state pool will benefit the mining industry as a whole and thereby be a benefit to the state.

Respectfully

R.B. Stiles
President

cc: The Honorable Loren Leman, Alaska State Senate
Steve Borell, AMA
Charlie Boddy, Usibelli Coal Mine, Inc.
Becky Gay, RDC

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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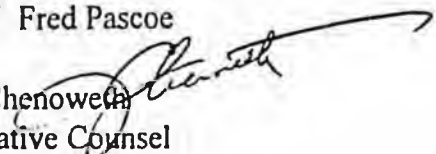
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 1, 1996

SUBJECT: House Bill 439, relating to minerals and coal (Work Order No. 9-LS1516(C))

TO: Representative Tom Brice
ATTN Fred Pascoe

FROM: Jack Chenoweth 
Legislative Counsel

House Bill 439 operates in two specific areas. It establishes a "Surface Coal Mining Advisory Commission" to follow developments affecting the surface coal mining industry in Alaska in order to advise the executive and legislature about necessary changes. It also expands the authorized use of the statewide bonding pool, now in place to assist operators of small mines meet their legal responsibilities for resource reclamation, to cover reclamation obligations of surface coal mining operators.

Material relating to Surface Coal Mining Advisory Commission:

Bill section 6 adds a new article, 3A, to the state's Surface Coal Mining Control and Reclamation Act (AS 27.21) to establish a nine-member Surface Coal Mining Advisory Commission and to define the advisory commission's duties.

Material relating to expanded use of statewide bonding pool:

Bill section 5 adds a new subsection, subsection (g), to AS 27.21.160, to recognize that applicants conducting surface coal mining operations may avail themselves of the use of the statewide bonding pool for reclamation activities associated with small mine activities to meet their surface coal mining reclamation obligations.

Bill section 1 amends AS 27.19.040(b), part of a chapter that addresses the legal responsibilities of mine operators for reclamation, to direct that the commissioner of natural resources modify and expand the authorized use of the statewide bonding pool for persons engaged in surface coal mining to meet reclamation obligations imposed on those operators.

Representative Tom Brice
February 1, 1996
Page 2

Bill section 2 amends AS 27.21.080(a) to deny a surface coal mine operator who is using the statewide bonding pool to meet reclamation requirements the opportunity to renew a permit if the operator has not complied with all requirements of the bonding pool.

Bill section 3 amends AS 27.21.140(d) to condition a permit approved for a surface coal mining permit applicant relying on use of the statewide bonding pool to meet reclamation requirements on the applicant's filing of evidence of the applicant's satisfactory compliance with the requirements with the statewide bonding pool.

Bill section 4 makes a conforming amendment to AS 27.21.160(a).

Bill section 7 makes a conforming amendment to the definition of "permit area" as the term is used in the state's Surface Coal Mining Control and Reclamation Act (AS 27.21).

JBC:glc
96-078.glc

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ALASKA COAL ASSOCIATION

ALASKA PRIMACY OF THE SURFACE COAL MINING REGULATORY PROGRAM

- Both the State and the Private Sector face a unique set of challenges and opportunities with regard to exploration, development, marketing, production and transportation of Alaska's Coal Resources.
- The federal Surface Coal Mining Control and Reclamation Act (SCMCRA) and the associated regulatory program is a "one size fits all" program and cannot take into account any unique challenges associated with exploration, development and production of Alaska coal or the reclamation of surface coal mined lands.
- The Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA) and associated regulatory program, as currently constituted, does not, to any significant degree, reflect the unique challenges and opportunities associated with exploration, development and production of Alaska coal or the reclamation of surface coal mined lands.
- Developments at the national level make this exactly the wrong time to relinquish primacy to OSM:
 - OSM's direct involvement in states with approved programs (primacy) is likely to be reduced in the near future as a result of enactment of proposed legislation currently in Congress.
 - Proposed appropriations currently in Congress for OSM would result in a RTF of 38% and a 9% cut in overall budget. The proposed staff cuts should absorb practically all of the budget cut.
- Relinquishing primacy of the surface coal mining regulatory program is inconsistent with the current policy of the State to obtain primacy over other federal environmental regulatory programs.
- While the total (direct & indirect) budget for the ASCMCRA program was on the order of \$1,852,650, only \$123,500 was funded by the State. The actual cost to the State is trivial.
- Relinquishing primacy could, and most likely would, have very negative effects on both the only active mine (Usibelli) and all projects currently under exploration and/or development.

The Alaska Surface Coal Mining Program consists of two parts; a) the permitting /enforcement function and b) the Abandoned Mined Land reclamation function. The latter, AML, is the carrot that gives states the added incentives to adopt their own permitting/enforcement programs.

In FY 1995, Alaska funded as "state share" \$123,500 toward the permitting/enforcement function. The Office of Surface Mining matched this sum but allowed an additional amount for indirect costs of conducting the program. The total federal funds for this function were \$155,050, giving a total function cost of \$278,550.

The AML function is 100% federal receipts. Funds are generated from a 35 cent per ton charge on coal production nationally. Alaska's share based on Usibelli Coal Mine, Inc.'s production for last year and federal distribution formula is \$156,504 (OSM has collected \$3,507,481 through FY94 and collects approximately \$525,000 annually) . Since the Alaska program attained "minimum" program status, we are eligible for \$2 million per year. Congress has authorized funding "minimum" program states at \$1.5 million for FY 94 and FY95. To bring our funding level up to this amount, we received \$1,343,496 in federal share distributions, and an additional \$13,000 for emergency reclamation.

In summary, by having the Alaska Coal Program, we received \$1,668,050 federal funds for \$123,500 state matching funds and about \$156,500 in Usibelli reclamation fees . Of this amount, \$1,077,000 will go into on-the-ground construction.

Consequences of terminating the Alaska Coal Program:

AML Options:

A) *Federal AML funds received amounting to approximately \$4.2 million will be returned to OSM, since the state will no longer control or have the ability to supervise contracts after July 1, 1996. Limited work will be done in the spring of 1996. The Division recommends this option.*

1) *A construction contract for reclamation at Wishbone Hill amounting to \$1.5 million will be put on hold and not advertized in January 1996 as planned. This will push reclamation into 1997 if the Coal Program continues past July 1, 1996.*

2) *Stop Treadwell Mine hazard reduction and do not initiate selection of another hardrock reclamation project.*

3) *Complete the Old Suntrana Tipple PCB cleanup project which was begun in 1995 by July 1, 1996.*

B) *Award the contract for \$1.5 million for reclamation work at Wishbone Hill but delay implementation until OSM provides construction supervision. Continue with the Upper Knob Creek reclamation under a new equipment rental contract through June 30, 1996 with a provision for continuation under OSM supervision. Complete 3) above.*

Numerous projects being undertaken by the permitting/enforcement program should be suspended since these projects could not be completed by July 1, 1996. These include:

Permitting/Enforcement Options:

A) *Suspend all permit work and focus on getting files, equipment, and pending applications ready for transfer to OSM on July 1, 1996. The Division's recommends selecting this option..*

1) *Program amendments to revise regulations that would become "preempted and superseded" by federal regulations would be suspended.*

2) *New permits including Usibelli's Two-Bull Ridge mine and Alaska Power & Telephone's Jarvis Creek mine would not be processed. Neither of these mine permit applications could be reviewed and completed by July 1, 1996.*

3) *Regulations for self bonding for the Alaska coal industry would not be needed. Any further revisions required by OSM to the proposed regulations will not be made.*

4) *Continue work only on mine permit amendments that can be completed and approved by July 1, 1996. This includes changes to exploration permits and revisions now under review at the Usibelli Coal Mine. A new mine permit for Nerox is currently planned to be completed during this period, if we get a complete application soon.*

5) *Continue the work on the revegetation workshop for the reason that it establishes a position good for the state and the coal industry after federal take-over. It formalizes by the efforts of the Alaska Coal Association, other contributors, and the Alaska Coal Program that Alaska conditions are different from those found in the Lower 48 states.*

6) *Continue implementing the Usibelli Coal Mine stability plan for the Poker Flats outslope.*

B) *Conduct the work of the Coal Program in a "business as usual" mode through June 30, 1996.*

The coal industry should expect that OSM will re-open mine permits to insure that they comply with federal regulations. Permit reviews, and the processing of amendments are reviewed on a "first-come" basis along with the federal Washington program and Indian tribes.

Effects of program termination on the Division and the Department

Total indirect cost monies received in FY96 are \$61,100. Of this, \$26,200 supports the Director's Office and \$25,900 supports Administrative Services.

The \$26,200 in the director's office was used to cover the vacancy factor, which amounted to

\$20,200 this year. Without the federal indirect money, the director's office must cover the vacancy factor in FY97 by requiring some employees to take leave without pay. This could be equal to 18 weeks of layoff, or one week per employee, depending upon pay grade and unforeseen position vacancies.

The loss of \$25,900 in indirect monies to Administrative Services and the loss of other federal indirect monies will result in the elimination of one full time employee and the redistribution of their workload to other staff.

(9)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 22, 1996

FURTHER REFERRALS: Labor and Commerce
Finance

Date of Committee Action: 2/5/96

The RESOURCES Committee considered:

HB 439

HOUSE BILL NO. 439

MINING BONDING POOL & ADVISORY COM'N

"An Act relating to minerals, including coal, to the statewide bonding pool for the reclamation activities imposed on mining operations, and to the statewide bonding pool's use for surface coal mining projects."

recommends it be replaced the same title
with the following committee substitute _____ a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) DNR

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	X			
<i>W.R. Williams</i>			X	
<i>[Signature]</i>			✓	
<i>[Signature]</i>				✓
<i>[Signature]</i>				✓
<i>[Signature]</i>	X			

CHAIR'S SIGNATURE *[Signature]*

