

SB

240



Alaska State Legislature

Official Business

State Capitol
Juneau AK 99801

SPONSOR STATEMENT

SENATE RESOURCES COMMITTEE

Senate Bill 240: Mining Bonding Pool

The Senate Resources Committee introduced SB 240 in response to recommendations by the Alaska Minerals Commission in its January 1996 report to the Legislature and Governor.

The Legislature in 1990 passed legislation to ensure reclamation during and after mining on state, federal, municipal and private lands and waters. In 1982, the Legislature passed a similar law regarding surface coal mining operations in Alaska.

The primary difference is that coal mining operations under AS 27.21.160 have been required to post a performance bond or surety that has been difficult for coal mine permit applicants to obtain.

Allowing surface coal mining owners and operators access to the state's bonding pool (AS 27.19.040(b)) will ensure reclamation bonding will be available for qualified Alaska developments and operations.

The testimony in the packet refers to the incorporation of a surface coal mining advisory commission in a House bill similar to SB 240. The Chairman chose not to include the creation of a new commission in SB 240, because of the cost and the likelihood that the issues raised can be addressed by the Alaska Minerals Commission.



Alaska State Legislature

Senate Resources Committee

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MEMORANDUM

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

FROM: Senator Loren Leman, Chairman
Senate Resources Committee

A handwritten signature in cursive script that reads "Loren Leman".

DATE: March 19, 1996

RE: SB 240: MINING BONDING POOL

Please schedule at your earliest convenience a hearing on Senate Bill 240: Mining/Bonding Pool. This legislation was introduced by the Senate Resources Committee at the request of the Alaska Minerals Commission. It is one of the Commission's recommendations to made in its January 1996 report to the Legislature.

SB 240 amends the Alaska Surface Coal Mining Control and Reclamation Act to explicitly allow coal operations to participate in the statewide bonding pool (AS 27.19.040(b)) in lieu of a performance bond under AS 2.21.160.

The bill was reported out of Resources with six do pass recommendations and passed the Senate February 14 with 19 yeas.

If you have questions regarding this legislation, please contact Senate Resources Committee Staff, Annette Kreitzer at 465-4907.

FISCAL NOTE

No. 1

Bill Version: SB240

(S) Publish Date: 2/7/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BIL

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to the statewide bonding pool BRU: Resource Development
for the reclamation activities imposed on mining operations... Component: Mining Development
 Sponsor: Senate Resources
 Requestor: Senate Resources Component Serial No. 442

Expenditures/Revenues	(Thousands of Dollars)					
	FY97	FY98	FY99	FY00	FY01	FY02
OPERATING EXPENDITURES						
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)					
	FY97	FY98	FY99	FY00	FY01	FY02
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)

There is no fiscal impact anticipated with implementation of this legislation.

Prepared by: Jules Trivison, Director Phone: 269-8625
 Division: Mining and Water Date: 5-Feb-96
 Approved by Commissioner: [Signature] Date: 5-Feb-96
 Agency: Natural Resources



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.

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

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.*

REPORT OF THE

Alaska Minerals Commission



JANUARY 1996

COMMISSION RECOMMENDATIONS

- 9 *The Governor and Legislature should provide expanded budgetary and programmatic support to the Citizens Advisory Commission on Federal Areas.*

COASTAL ZONE MANAGEMENT

FINDING 10. Alaska Statute 46.40.040 lists the duties of the Coastal Policy Council (CPC). One duty is to identify and manage "Uses of State Concern." Alaska Statute 46.40.060 states that the CPC is to review and approve Coastal Management Programs, and to ensure that the programs do not arbitrarily or unreasonably restrict or exclude "Uses of State Concern." Alaska Statute 46.40.100 states that the Legislature shall approve guidelines and standards adopted by the CPC. The CPC has defined the "Uses of State Concern" by resolution.

COMMISSION RECOMMENDATIONS

- 10 *The Legislature should act on the resolution of the Coastal Policy Council which defines the "Uses of State Concern," and ensure that economic development opportunities, such as mining, be included in the guidelines and standards.*

COAL ISSUES

FINDING 11. 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. However, primary difference exists, 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.

COMMISSION RECOMMENDATIONS

- 11 *The Legislature should prepare necessary changes to ^{not necessary.} ~~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.*

EDUCATION AND RESEARCH

FINDING 12. The "Alaska Resource Kit: Minerals" which is being used in the statewide public school system, is an excellent program for educating Alaska's students in the issues and fundamentals of resource development. In the past, the program has been a cooperative effort between the Department of Education, which developed the curriculum and is responsible for its implementation, and the Alaska Mineral and Energy Resource Education Fund (AMEREF). AMEREF is an industry-supported organization which annually funds the production and replacement of the teaching materials and which partially funds the salary of a Mineral Specialist in the Department of Education who is responsible for providing teacher training and for implementing the program into the school system. This program has proven to be a success and reflects the cooperation that has existed during the ten years of the program's existence.

The State has recently reneged on its half of the funding for the salary of the Minerals Specialist. This program must not falter, as a broad-based resource education of Alaska's residents is needed to ensure an understanding of the resource needs of a modern society.

President: R. B. Stiles
711 H Street, Suite 600
Anchorage, Alaska 99501
Tel. (907) 276-6868
Fax. (907) 276-2395

Secretary: Charles P. Boddy
122 First Avenue, Suite 302
Fairbanks, Alaska 99701
Tel. (907) 452-2625
Fax. (907) 451-6543



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

Sec. 27.21.160. Performance bond. (a) Except as provided in (c) of this section, after an application for a permit has been approved and before the permit may be issued, the applicant must file with the commissioner, on a form prescribed and furnished by the commissioner, a performance bond payable to the State of Alaska and conditioned on faithful performance of the requirements of this chapter and the permit. The bond must cover the area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee shall provide an additional bond or bonds to cover those increments in accordance with this section. The amount of the bond required for an area within the permit area shall be determined by the commissioner and shall reflect the probable difficulty of the reclamation considering the topography, geology, hydrology, revegetation potential, and similar factors relating to the area. The amount of the bond must be sufficient to assure the completion of the reclamation plan by the commissioner in the event of forfeiture and, for the entire permit area, may not be less than \$10,000.

(b) Liability under the bond must exist for the duration of the surface coal mining and reclamation operation and for the period of time of the permittee's responsibility under the performance standards established by regulation under AS 27.21.210. The bond shall be executed by the applicant and, except as provided in (d) of this section, a corporate surety licensed to do business in the state.

(c) An applicant may deposit with the commissioner cash, negotiable bonds of the United States or of the state, or negotiable certificates of deposit of a bank organized or transacting business in the United States to satisfy the requirements of (a) of this section if

(1) the value of the deposit is equal to or greater than the amount of the bond required under (a) of this section;

(2) liability under the deposit is for a period of time described in (b) of this section; and

(3) the deposit is made under the terms which, under (a) of this section, would apply to a performance bond.

(d) The commissioner may accept a bond executed by the applicant without separate surety if the applicant demonstrates to the satisfaction of the commissioner that the applicant has sufficient financial means for the purposes of the bond. The commissioner shall adopt regulations to implement this section.

(e) The commissioner shall maintain a deposit under (c) of this section in a separate escrow account and shall annually pay the interest accruing on the deposit to the permittee.

(f) The commissioner shall adjust the amount required under (a), (c), or (d) of this section and the terms of the acceptance of that amount if the commissioner determines there is good cause, including changes in affected land areas or in the probable cost of future reclamation, for the adjustment. (§ 1 ch 29 SLA 1982)