

**HB**

**46**

Ustbelli Coal Mine, Inc.  
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Charlie Boddy  
lent Of Governmental Relations

Charlie Boddy  
Vice President of Governmental Relations

March 21, 1997

The Honorable Rick Halford  
Resources Committee Chairman  
Alaska State Senate  
Capitol Building  
Juneau, Alaska 99801

Subject: CSHB46 "An Act relating to mining ...."

Dear Chairman Halford:

Thank you for this opportunity to comment on amendments proposed for inclusion in the above referenced legislation. In particular I would like to address portions of HB173 which may be offered as amendments to CSHB46.

Changes have been proposed to AS 27.21.120 Small operator assistance program, a section of the Alaska Surface Mining Control and Reclamation Act. To maintain primacy from the federal government for the regulation of surface coal mining, the Alaska program has to be changed from time to time, to maintain it's status as being "as effective as" the federal program. The proposed changes are necessary to keep the Alaska program in accord with the federal program.

The currently proposed changes are directed at two aspects of the assistance program. First is a change to the maximum tonnage from 100,000 to 300,000. This would allow a permit applicant who will not exceed a production level of 300,000 tons per annum to apply for monetary assistance. The second major change to the program is the type of work the grant monies can underwrite. The proposed new language allows funding to: determine probable hydrologic consequences, evaluate test borings and core samples, develop cross-section maps and plans, gather archeological and historic information, perform a preblasting survey and provide a report detailing the findings.

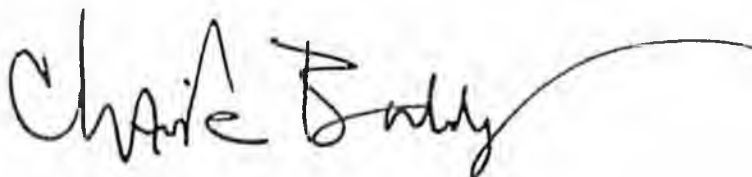
USIBELLI COAL MINE, INC. ♦ 100 Cushman St. - Suite 210 ♦ Fairbanks, Alaska 99701  
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The Alaska Department of Natural Resources administers the yearly grant monies provided by the federal government's Office of Surface Mining Reclamation and Enforcement. The amount of the grant for the small operator assistance program currently ranges between 85-100 thousand dollars per year. Unused portions of the grant monies lapse at years end – with no carryover allowed. As of this writing,, no monies have ever been expended from the fund.

The proposed changes are wholeheartedly supported by our company with just two caveats. The proposed legislation does not place a cap on the amount of funding an applicant may receive. At this time the grant level is small enough that concern is really unwarranted. However, grant monies in the future could become a much more significant number. Given this fact – the program could literally become a way for the state to unwillingly act as the underwriter to a sole coal mine operator. This was certainly not the intent of the original program, nor should it be. If a ceiling amount could be set in statute, then multiple small operators could use the fund as it was intended – to aid them in securing the labyrinth of data needed to fulfill their surface coal mining permitting requirements. Secondly, some additional language needs to be added to the currently proposed amendments to insure the Alaska program wholly tracks it's federal counterpart. There is no mechanism suggested for recovery of funds received by an operator who goes into production at a rate higher than the 300,00 tons per year. The new language could read as follows:

*"If the commissioner finds that a coal operator has received monies appropriated from the small operator assistance program, and if the coal operators actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit, the coal operator shall reimburse the regulatory authority for the cost of services rendered including funds drawn from the small operator assistance program."*

Thank you for considering our comments and suggestions to this legislation. If I can be of further service to you or your staff regarding this resource matter, please don't hesitate to call. With best regards, I remain,  
Sincerely,



cc: Honorable Pete Kelly  
Honorable Gene Therriault  
Honorable Richard Foster  
Commissioner John Shively  
Director Jules Tileston  
Bob Stiles, ACA President  
Becky Gay, RDC Executive Director  
Steve Borell, AMA Executive Director

**HENRY J. CAMAROT**

14634 W. Black Gold Lane  
Sun City West, Arizona 85375  
602-214-7515

Admitted in Alaska

VIA FAX: 907-465-4928

March 10, 1997

Honorable Rick Halesford  
Alaska State Capitol Bldg., Room 121  
Juneau, Alaska 99801

Attention: Brett Huber

Re: House Bill No. 46(RES)

Dear Senator Halesford:

This is a follow-up to my conversation with Brett Huber and Senator Bert Sharp's office (Tom Williams) regarding the above House Bill. I represent Howard Hayes and his son, Michael Hayes, who are miners and hold a production license under A.S.38.05.207 with respect to the A-J Tailings. In the past they have mined on the subject property pursuant to this production license.

There is and has been a contest with the surface owners regarding their mining claims that has been at issue for over 13 years. It has been to the Alaska Supreme Court twice, and in each instance the Supreme Court held in the Hayeses' favor. The case is again pending in the Supreme Court and it is our position that the production license reflects a property right that protects their right to mine as to their claims.

House Bill 46 would repeal the production licenses granted under A.S.38.05.207. (See Section 11 of H.B. 46 and also Section 2 amending A.S.38.05.035(e)(6)(F).

It may be suggested that the Alaska General Savings Clause would protect the Hayeses' production license rights, and that may be the case; however, so that there is no question about it, may I suggest that language be inserted in House Bill 46 making it clear it is in no way intended to modify the rights that production licensees have, and particularly if House Bill 46 is enacted into law.

I should note that there are some 32 other production licensees, and in contacting two of them (we have no addresses or telephone numbers for the others), they were unaware of House Bill 46 and

Honorable Rick Halsford  
March 10, 1997  
Page 2

one of its intended purposes, i.e., the elimination of production licenses. It is urged that written notice be given to these persons so that their views may be expressed.

Over and above the foregoing statements, I would note that I am sure the surface owners would seize upon House Bill 46 as having some effect on the Hayeses' law suit pending in the Supreme Court; and although it may be forceably argued that it does not, I would appreciate on behalf of the Hayeses that their proccent rights under the production license they hold not be tampered with.

If I can answer any questions, please don't hesitate to advise me.

Very truly yours,

  
HENRY J. CAMAROT

HJC/bc

cc: Howard Hayes

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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FAX: (907) 269-8918

March 25, 1997

Senator Rick Halford  
State Capitol, Room 121  
Juneau, AK 99801-1182

RE: House Bill 46, related to mining, as amended

Dear Senator Halford:

On behalf of the administration, the department is pleased to confirm our support for HB 46 as amended by the Senate Resources Committee on March 20, 1997.

The amendment to incorporate HB 173 by Representative Foster is especially pleasing since that bill has significant streamlining implications for the mining industry and the department. This is important since we received a +300% increase in the number of applications over 1996 (106 vs 33) for double the total amount of credits (\$26.6 million vs \$13.3 million)

We have no objection to the proposed designation of the Petersville Recreational Mining Areas. It is the department's understanding that designation of the two areas previously closed to mineral entry under MCO 674 will not limit the ability of the department to determine the extent of commercial recreational enterprise on these two tracts that is in the best public interest.

We appreciate your consideration and urge passage of the amended bill.

Sincerely,

  
John T. Shively  
Commissioner

cc: Representative Pete Kelly  
Representative Gene Therriault  
Representative Richard Foster

*Bill file*



# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING AND WATER MANAGEMENT

TONY KNOWLES, GOVERNOR

□ 3601 C STREET, SUITE 884  
ANCHORAGE, ALASKA 99503-5935  
PHONE: (907) 269-8652  
Fax: (907) 563-1853  
E-Mail: kerwink@dnr.state.ak.us

November 25, 1996

## NOTICE

Dear Miner:

The attached proposed mining law changes are for your information. These changes are being proposed to the Legislature during the 1997 session. If you have specific comments or concerns feel free to contact our office at the above address, the Alaska Miners Association or your legislators.

Thank you very much.

**DIVISION OF MINING AND WATER MANAGEMENT  
PROPOSED MINING LAW CHANGES TO  
ALASKA STATUTE TITLES 27, 38 and 41.**

NOTE: New wording underlined, deleted wording [bracketed].

\*Sec. 1. - AS 27.21.120 is amended to read:

**Sec. 27.21.120 SMALL OPERATOR ASSISTANCE.**

If the commissioner finds that the probable total annual production of all of the surface coal mining operations of an applicant, or if the applicant is a subsidiary of another corporation, of the applicant's parent corporation and its subsidiaries, will not exceed [100,000] 300,000 tons, the commissioner shall, at the written request of the applicant, engage at no cost to the applicant [A LABORATORY TO PREPARE A DETERMINATION OF PROBABLE HYDROLOGIC CONSEQUENCES OF THE APPLICANT'S PROPOSED OPERATION AND A STATEMENT OF TEST BORING OR CORE SAMPLINGS IF THESE ARE REQUIRED BY REGULATIONS ADOPTED UNDER AS 27.21.110.]for the following items:

(a). To the extent possible with available funds, a qualified laboratory to make the determination and statement referenced in (c) of this section for eligible operators who request assistance.

(b). The commissioner shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the department shall be sufficient to satisfy the requirements for:

(1) The determination of probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including necessary engineering analyses and designs;

(2) The drilling and statement of the results of test borings or core samplings for the proposed permit area;

(3) The development of cross-section maps and plans if required;

(4) The collection of archaeological and historic information and related plans required by the State Historic Preservation Officer for Alaska;

(5) Required pre-blast surveys;

(6) Required collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats and

for subsistence uses of the permit area and adjacent areas, and information and plans for any other environmental values; and

(c). Data collected and analyses may proceed concurrently with the development of mining and reclamation plans by the operator.

(d). Data collected under this program shall be made publicly available in accord with Section 27.21.100.

*Justification: This is a housekeeping amendment to make the Alaska statute compatible with an federal amendment published in the May 31, 1994 Federal Register that expanded the former federal program as outlined in italic above. The corresponding State authorization for this part of the coal program is in Statute, therefore, the only way that the state can take advantage of the more liberal federal program is to revise the basic statute. Alaska Power and Telephone (the holder of a state coal lease at Jarvis Creek immediately south of Delta Jct.) has requested the state to provide financial assistance in their quest to develop that coal field for power production at Tok. Without this amendment, AP&T will be limited in its use of federal funds.*

**\*Sec. 2. - AS 27.30.020 is amended to read:**

**Sec. 27.30.020. PROCEDURE FOR REQUESTING AND TAKING THE CREDIT.**

To obtain the credit authorized by this chapter,

(1) a person shall submit a request for the credit as follows:

(A) the person may [SHALL] submit a request and a statement of expenditures

(i) whenever the amount of credit certified in the request totals at least \$250,000 and the period covered is at least one year; or

(ii) when the person is ready to take the entire balance of the credit, regardless of the total amount of the credit

[FOR THE PREVIOUS CALENDAR YEAR NOT LATER THAN 60 DAYS AFTER THE CLOSE OF THAT CALENDAR YEAR];

(B) the request must be on a form provided by the department and

(i) describe the work accomplished during each year of the period covered by the request [PREVIOUS YEAR], the number of employees, and the names and number of consultants; [AND]

(ii) provide a detailed list or ledger of expenditures of the accomplishments described in (I) of this subparagraph and a list of exploration activity data that [IN THE FUTURE] will be [MADE AVAILABLE] provided to the [COMMISSIONER UNDER (2)(A) OF THIS SECTION] department; and

(iii) provide a statement by a certified public accountant that those expenditures for a single mining operation of more than \$40,000 in any calendar year are supported by receipts and are for activities set out in AS 27.30.010(a);

(C) the person submitting the request is not required to transmit copies of receipts with the request, but the statement of expenditures is subject to audit in the discretion of the commissioner;

(D) if the commissioner determines to audit the statement of expenditures, the commissioner may require the person submitting the request to justify claims of expenditures with receipts and other reliable information;

(E) the commissioner shall respond to the request by [SEPTEMBER 30] within six months from the date of the request by certifying or not certifying the person's expenditures; if the commissioner

(1) does not certify all of the expenditures, the commissioner shall state the reasons for denial of certification of those expenditures which the commissioner has not certified and give the person making the request an opportunity to correct any problems or to provide additional information;

(ii) certifies expenditures, the commissioner shall specify the exploration activity data requirements [FOR THAT YEAR] that must be presented to the department at the time of the taking of the credit;

(F) if the commissioner neither certifies nor denies certification of expenditures [BY SEPTEMBER 30] within six months of submission of all documents required under this subsection or requested by the commissioner, the expenditures are certified as submitted;

(2) the person whose expenditures have been certified under (1) of this subsection may thereafter request the taking of the credit for the certified expenditures as follows:

(A) the person shall deliver to the commissioner the exploration activity data identified by the commissioner under (1)(E)(ii) of this section, and shall request the commissioner's approval of the taking of the credit;

(B) the commissioner shall approve [OR DISAPPROVE] the taking of the credit [WITHIN SIX MONTHS AFTER RECEIPT OF THE REQUEST FOR TAKING OF THE CREDIT;] if the

[(I)] exploration activity data complies with the requirements identified by the commissioner under (1)(E)(ii) of this section[, THE COMMISSIONER SHALL APPROVE THE TAKING OF THE CREDIT;

(II) REQUEST IS DISAPPROVED, THE COMMISSIONER SHALL STATE THE REASONS FOR DISAPPROVAL AND OFFER THE PERSON SEEKING TO TAKE THE CREDIT AN OPPORTUNITY TO CORRECT ANY PROBLEMS OR TO PROVIDE ADDITIONAL EXPLORATION ACTIVITY DATA OR OTHER INFORMATION;

(C) IF THE COMMISSIONER NEITHER APPROVES NOR DISAPPROVES THE REQUEST TO TAKE THE CREDIT WITHIN SIX MONTHS AFTER SUBMISSION OF THE REQUEST, THE TAKING OF THE CREDIT IS APPROVED].

**\* Sec. 3. - AS 27.30 is amended by adding a new section to read;**

**Sec. 27.30.025. PROCEDURE FOR REQUESTING CONDITIONAL CERTIFICATION.**

(a) A person may submit a request for conditional certification for the credit when:

(1) the person has utilized or intends to utilize a novel approach technique;

(2) there exists a substantial question regarding the nature of the exploration data which will be delivered to the department; or

(3) the person contemplates assigning any right to a credit under AS 27.30.060 and there exists a substantial question regarding whether the expenditures will be certified;

(b) A person shall submit a request for conditional certification on a form provided by the department.

(c) The commissioner shall respond to the request within six months from the date of the request by issuing a letter stating that:

(1) under the specific facts and circumstances proposed by the person, the proposed expenditures and data appear eligible for a credit;

(2) there is not adequate information to determine whether the proposed expenditures and data appear to be eligible for a credit; or

(3) the expenditures and data as presented do not appear to be eligible for a credit.

(d) "Conditional certification" means that the commissioner finds that exploration expenditures and data, under the specific facts and circumstances proposed by the person, appear to be eligible for the credit, subject to a request for the credit and certification under AS 27.30.020.

**\*Sec. 4. - AS 27.30.030(c) is amended to read:**

**Sec. 27.30.030. APPLICATION OF THE CREDIT.**

(c) The person may not apply the credit under this section if the application [, WHEN ADDED TO THE CREDITS PREVIOUSLY APPLIED UNDER THIS SECTION,] would exceed the total amount of the credits approved under AS 27.30.020(2).

**\*Sec. 5. - AS 27.30 is amended by adding a new section to read:**

**Sec. 27.30.095 FEES.**

The commissioner may charge a fee for direct costs incurred by the department and the Department of Revenue for evaluating or auditing an application to certify the credit authorized under AS 27.30.010, including the cost of contractors selected by the commissioner to assist in the evaluation or audit. The fee may not exceed \$500 for each application covering one or more years if the amount claimed in the application is \$1,000,000 or less. The fee may not exceed \$1,000 for each application covering one or more years if the amount claimed is more than \$1,000,000.

**\*Sec. 6. - AS 27.30.099 is amended to read:**

**Sec. 27.30.099 DEFINITIONS.**

(1) "department" means Department of Natural Resources;

*Justification for Changes to AS 27.30: Re-introduce the changes worked out with the Alaska Miners Association and legislative staff last session. The basic thrust was to reduce the paperwork required by the Department of Natural Resources and a mineral property holder by deleting the mandatory requirement for an annual filing and automatic approval by the*

*Commissioner if no action was taken and substitute a threshold for an application that: (1) will recover all eligible exploration costs associated with a mineral property that has all of its permits and is ready to start development; (2) or exceeds a certain level of eligible credits in one year, (3) or is dollar driven with a provision for review by the department when properties were changing hands and the amount of likely exploration incentive credit were a significant factor in the transfer of mineral rights. Application fees are included since the original legislation did not provide funding as noted in the fiscal note. The fees were developed in cooperation with the mining industry.*

**\*Sec. 7. - AS 38.05.185(a) is amended to read:**

**AS 38.05.185 (a) GENERAL MINING RIGHTS.**

(a) The acquisition and continuance of rights in and to deposits on state land of minerals, which on January 3, 1959, were subject to location under the mining laws of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine that land from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, that land that shall be closed to location under AS 38.05.185 - 38.05.275 [MINING]. State land may not be closed to [MINING OR MINERAL] location under AS 38.05.185 - 38.05.275 except as provided in AS 38.05.300 and unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

*Justification: (technical amendment for housekeeping purposes). Re-introduce.*

**\*Sec. 8. - AS 38.05.190 (a) is amended to read:**

**AS 38.05.190 (a) QUALIFICATIONS.**

(a) The right to acquire exploration and mining rights under AS 38.05.185 - 38.05.275 may be acquired or held only by

- (1) citizens of the United States at least 18 years of age;
- (2) legal guardians or trustees of citizens of the United States under 18 years of

age on behalf of the citizens;

(3) persons at least 18 years of age who have declared their intention to become citizens of the United States;

(4) [ALIENS AT LEAST 18 YEARS OF AGE IF THE LAWS OF THEIR COUNTRY GRANT LIKE PRIVILEGES TO CITIZENS OF THE UNITED STATES;

(5)] corporations organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state [, EXCEPT THAT IF MORE THAN 50 PERCENT OF THE STOCK OF A CORPORATION IS OWNED OR CONTROLLED BY ALIENS WHO ARE NOT QUALIFIED, THE CORPORATION IS NOT QUALIFIED TO ACQUIRE OR HOLD THE RIGHTS];

(5) [(6)] associations of persons described in (1) - (4) [(1) - (5)] of this subsection.

*Justification: (technical amendment for housekeeping purposes). Re-introduce.*

**\*Sec. 9. AS 38.05.207 is repealed.**

**AS 38.05.207 PRODUCTION LICENSE. Repeal**

*Justification: This law has not been enforced by the department for years. Compliance by the mining industry is also very low. The only purpose the law serves is for adjudication of conflicts between locators. Rather than get a production license, most locators who are concerned about a conflict apply for a upland mining lease under 38.05.205. The production license requirement is also duplicative of the mining license issued under 43.65.010.*

**\*Sec. 10. - AS 38.05.211(d) is repealed and reenacted to read:**

**AS 38.05.211 ANNUAL RENTAL.**

(d) The rental amount established under this section shall be revised by the commissioner as provided in this section based on changes in the Consumer Price Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average) compiled by the Bureau of Labor Statistics, United States Department of Labor, as revised, rebased or replaced by that bureau. The reference base index is the index for January - June, 1989, as revised or rebased by that bureau. The rental amount shall be revised by the commissioner if the change between the index for the first six months of the current year and the most recent index used to revise the rental, or the reference base index if the rental amount has never been revised, equals or exceeds \$5. The rental amount shall be increased or decreased, as appropriate, by an amount equal to the

change in the index described in this subsection rounded to the nearest whole \$5 unit. The commissioner shall calculate the change in the index annually and, if the rental amount must be revised, shall adopt a regulation establishing the revised rental amount. A revised rental amount applies to a rental payment if the regulation establishing the revised rental amount took effect at least 90 days before the date the rental payment is due.

*Justification: (technical amendment for housekeeping purposes). Re-introduce.*

**\*Sec. 11. - AS 38.05.245 is amended to delete subsection (b) which reads as follows:**

**AS 38.05.245 PROSPECTING SITES.**

[ (b) A PROSPECTING SITE LOCATION MAY NOT INCLUDE WITHIN ITS EXTERIOR BOUNDARIES, NOR SHALL ITS BOUNDARIES BE COINCIDENT WITH MORE THAN ONE BOUNDARY OF ANY MINING CLAIM, MINING LEASEHOLD LOCATION OR LAND UNDER A MINING LEASE, UNLESS THE LOCATOR OF THE PROSPECTING SITE IS ALSO THE OWNER, OPTIONEE OR LESSEE OF SAID MINING PROPERTY. IF SUCH MINING PROPERTY OR AREA IS SO INCLUDED OR BOUNDED, THE PROSPECTING SITE IS VOID.]

*Justification: AS 38.05.195 does not prohibit the overlapping of mining claims under different ownership. Since prospecting sites grant a temporary prospecting right and preference right, the law should not prevent a overlapping claim which has a discovery and more title tenure. Furthermore, the division does not adjudicate these overlapping conflicts.*

**\*Sec. 12. - AS 38.05.255 is amended to read:**

**Sec. 38.05.255. SURFACE USE OF LAND OR WATER.**

(a) Surface uses of land or water included within mining properties by owners of those properties shall be limited to those necessary for the prospecting for, extraction of, or basic processing of mineral deposits and shall be subject to reasonable concurrent uses. Leases [PERMITS] for millsites and tailings disposal may be issued [GRANTED] by the director. The leases [PERMITS] shall be conditioned upon payment of a reasonable annual rent [CHARGE] for the lease [USE] and restriction to [CONTINUANCE OF] the limited use. Timber from land open to mining without lease, except timberland, may be used by a mining claimant or prospecting site locator for the mining or development of the location or adjacent claims under common ownership. On other land, timber may be acquired as provided in this chapter. Use of water shall be made in accordance with AS 46.15.

**\*Sec. 13. - AS 38.05.255 is amended by adding a new subsection (b) to read:**

(b) A lease issued under this section is exempt from the provisions of AS 38.05.070 - 38.05.105. The commissioner, by regulation, shall establish appropriate leasing procedures and annual rent amounts for leases under this section.

*Justification: (technical amendment for housekeeping purposes). Re-introduce.*

**\*Sec. 15. - AS 38.05.275 is amended to add a new subsection (d) to read as follows:**

**AS 38.05.275 RECOGNITION OF LOCATIONS.**

(d) If a mineral location is made in a disputed navigable waterway such as a river bottom where there is likely to be litigation between the state and federal government over ownership, the mineral location shall be treated as located on "state selected land", and will not become a mining claim until such time as the dispute is resolved or court decision rendered granting the state title to the river bed area.

*Justification: Will treat mining claims located in certain disputed navigable waters where there was there is likely to be litigation between the state and federal government over ownership and the claim holder will not be able to mine as a direct result of this dispute. The proposed solution is treat these disputed state mining claims in the same manner as claims located on land selected by the state. (The mining claim is valid only at such time as the state gets TA from BLM, or in this case, there are sufficient factual data about the physical characteristics of the water body in question or litigation has been resolved.) Recent history suggests that where factual data is insufficient that a period of 5 to 10 years of data collection may be required; litigation can often take 5 to 10 years. Under existing law and regulation, the claim holder must pay annual rental and do annual labor (or pay \$100 per claim) just to maintain a future right that is subject to the whims of the federal courts at an uncertain future date.*

# SENATE COMMITTEE REPORT

DATE: 2/10/97

FURTHER:

DATE TURNED  
IN TO OFFICE: 3/26/97

Resources Committee considered

CS FOR HOUSE BILL NO. 46(RES)

"An Act relating to mining; and providing for an effective date."

and recommends:

- be replaced with S CS HB 46 (RES)
- adopt previous      CS      (    )
- attached amendment(s)
- adopt Letter of Intent by      Committee
- further referral to the      Committee

- Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical change  
 new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Bob Sharp</i>	✓				
<i>John S. ...</i>	✓				
<i>Thomas J. ...</i>	✓				
<i>...</i>	✓				
<b>CHAIR: <i>Rich Halford</i></b>	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
DNR/MINING	3/20		X

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
Id. RES	11/30	X	

APPROPRIATION -- no fiscal note

\*Include fiscal notes accompanying Governor's bill

# FISCAL NOTE

STATE OF ALASKA

BILL NO. SCSHB46(RES)

**1997 LEGISLATIVE SESSION**

Revision Date: <u>20-Mar-97</u>	Dept Affected: <u>Natural Resources</u>
Title: <u>An Act relating to mining; and providing for an effective date.</u>	BRU: <u>Resource Development</u>
Sponsor: <u>Kelly, Therriault</u>	Component: <u>Mining Development</u>
Requestor: <u>S(RLS)</u>	Component Serial No. <u>442</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	4.0	4.0	4.0	4.0	4.0	4.0
TRAVEL						
CONTRACTUAL	3.5	3.5	3.5	3.5	3.5	3.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>7.5</b>	<b>7.5</b>	<b>7.5</b>	<b>7.5</b>	<b>7.5</b>	<b>7.5</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	7.5	7.5	7.5	7.5	7.5	7.5
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>7.5</b>	<b>7.5</b>	<b>7.5</b>	<b>7.5</b>	<b>7.5</b>	<b>7.5</b>

Estimate of any current year (FY97) 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)

HB 46 is housekeeping in nature. Amendments to the bill in Committee deleted the requirement to develop new regulations. The change in the requirements for adjusting annual rental for state-owned mineral property is better in that adjustments are to the nearest whole \$5. Change in the cost of administration or to mineral property holders are speculative since there will be bookkeeping and billing savings. For example if this had been the tenth year under the existing law, the rental for a 40 acre mineral property would be \$25.59 if claim is less than 5 years old, \$51.19 if between 5 and 10 years old, and \$127.96 if more than 10 years old. Under the amended version these would be \$25, \$50, and \$130 respectively. The booking/billing savings are considered to be a wash for the purposes of estimating administrative costs and revenue to the state treasury.

(continued on following page)

Prepared by: <u>Jules Tileston, Director</u>	Phone: <u>269-8625</u>
Division: <u>Division of Mining and Water Management</u>	Date: <u>20-Mar-97</u>
Approved by Commissioner: <u>[Signature]</u>	Date: _____
Agency: <u>Natural Resources</u>	

Analysis HB46 continued...

Amendment to the exploration incentive credit program will require authority to receive an estimated \$7,500 in application fees annually. During the initial year of the program, administrative costs for processing 33 applications were \$20K from other funds since the exploration incentive credit program was unfunded. This expenditure was necessary since the legislation provided for automatic approval of more than \$13,300K in these applications if the commissioner took no action.

The existing statutory deadline for requesting certification of exploration credits during calendar year 1996 was March 3, 1997. The revisions do not require the development of regulations. It does require future submissions to be on a form developed by the department. The existing form has been in use for two years and was developed by the department, in close cooperation with the Department of Revenue and the mining industry. This existing form may require some minor revisions, but no substantive work is expected. The estimated annual work is projected to total about 2 work months as a result of 5 applications under \$1,000, and 5 over that amount: hence, the request to receive the \$7.5K to cover direct administrative costs. The \$7.5K will provide the capability to contract a substantial part of the review of the new applications that will already have a CPA statement for any year where the credit exceeds \$40K for a single mineral property.

There are no known costs to the department from designation of the two tracts at Petersville as Recreational Mining Areas. An existing Mineral Closing Order (674) requires that detailed consideration be given to the best way to manage the two tracts in the public interest. Once the plan is completed, there may be additional costs required to manage the two areas.

# FISCAL NOTE

No. 1  
 Bill Version: CSHB 46 (RES)  
 (H) Publish Date: 1/31/97

STATE OF ALASKA  
 1997 LEGISLATIVE SESSION

BILL NO.

Title: An Act relating to mining; and providing for an effective date  
 Sponsor: Kelly, Therriault  
 Requestor: H(RES)

Dept. Affected: Natural Resources  
 BRU: Resource Development  
 Components: Mining Development  
 Serial #: 442

**EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)**

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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**FUNDING: (THOUSANDS OF DOLLARS)**

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**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)**

see attached analysis

Prepared by: Rep. Bill Hudson, Co-Chair  
Rep. Scott Ogden, Co-Chair

Date: 1/30/97  
 Phone: 465-3715  
 Phone:

# Alaska State Legislature

REPRESENTATIVE  
PETER KELLY

Mailing Address  
119 N. Cushman Suite 203  
Fairbanks, Alaska 99701  
(907) 456-8161



White in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-2327

House District 31

## House Of Representatives

Sponsor Statement

**House Bill 46**

Mining

House Bill 46 provides technical corrections to language in the existing mining code. These corrections reflect the actual practices of the Department of Natural Resources.

# Alaska State Legislature

REPRESENTATIVE  
PETER KELLY  
Mailing Address:  
119 N. Cassinian, Suite 203  
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White or Lincoln  
State Capitol  
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(907) 465-2327  
House District 3

## House Of Representatives

### Sectional CS House Bill 46

Sec. 1. Technical reference to the "Lease" in Section 7. Exempts mining lease from oil & gas lease requirements.

Sec. 2. Technical deletion of the old language referring to mining "production licenses" on page 2, and, on page 3, the insertion of the new mining "surface use lease" from section 7.

Sec. 3. Technical renumbering of reference in prior section.

Sec. 4. Deletes "mining," which is an activity, and inserts "location," which establishes the right to mine. Because the closure is prospective, i.e. it is subject to existing rights, it is necessary to close an area to location. Mineral closures do not preclude mining on mineral locations that exist prior to the date of mineral closure. Mineral closures only apply to new mineral locations.

Sec. 5. Updates title 38 definition of corporation to reflect current definitions used elsewhere in state statutes and in federal laws.

Sec. 6. Reduces paperwork within DNR, and provides a clean \$5 unit for increase or change, not fractions of a dollar. The current language could make the calculation of rental payments needlessly cumbersome for both the mineral holder and the state.

Sec. 7. Clarifies the language in this section. The Department of Natural Resources issues Leases not [PERMITS] for a mill site. Miners pay annual rent not a "[charge]." Miners are restricted to a specific set of uses relating to mining.

Sec. 8. Confirms that the mill site lease of Sec. 7, is treated the same as a mining lease, not competitive bid leases.

Sec. 9. Conforms the mining claim abandonment procedures to other technical modifications in the bill.

Sec. 10. Technical renumbering from section 2.

Sec. 11. Eliminates redundancy by deleting the portions of the production license paperwork now achieved better in with the "mining license" issued by the Department of Revenue.

Sec. 12 and 13, and 14. Effective dates.

# Alaska State Legislature

REPRESENTATIVE  
PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203  
Fairbanks, Alaska 99701  
(907) 456-2161



While in Juneau  
State Capitol  
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House District 31

## House Of Representatives

January 31, 1997

Discussion: House Bill 46

HB 46 has come out of the permitting process undergone by Fort Knox, Illinois Creek and other large operations on State land. In the intensive review undergone by those mines, several flaws and inconsistencies were discovered in Title 38.

This bill provides those technical corrections, and provides some efficiencies for DNR practices.

The bill is supported by the administration and industry. As far as I know it is devoid of controversy.

Sections 1, and 3. Renumber references.

Section 2. Clarifies that the millsite lease (sect. 7) is **exempt from the best interest findings** requirement of Title 38.05.035, just like all other mining leases and claims.

The change from the word "permit" to the word "lease" in Section 7 would result in confusion unless clearly added to the list of mining leases exempted from the best interest finding. See: Attachment 2.

Section 4. Recognizes that a mineral closure closes an area of state land to **location** of a mining claim, and not to mining.

The state does not close an area to mining. A mineral closing order cannot take away the rights of a prior existing miner. This has long been understood, but was incorrect in this part of the statutes.

Section 5. Updates the mining definition of a corporation to reflect the modernization of the US and State codes.

The corporations investing in Alaska pointed out that we have a different definition under mining law than we have under corporate law.

**Section 6.** Streamlines the inflation indexing for claim rentals. The rental will be rounded to the nearest \$5, every ten years.

The recalculation of the claim rental for inflation would result in rental amounts in odd fractions of a dollar. This is an unnecessary burden to both small miners, and to the agency.

Inflation indexing is based on the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics, for the Anchorage Metropolitan Area. The base date is 1989, and claim rental fees will increase in 1999.

Based on current inflation rates the fees might be:

1996 = \$20	1999 = \$25
1996 = \$40	1999 = \$50 or \$55
1996 = \$100	1999 = \$130 or \$140

Note: there is a sheet in the packet with sample calculations showing the fractional cents for several years. See also attachment 1 for original language.

**Section 7. Lease v. Permit.** Provides for the state to **lease** a mill site and charge an **annual rental**, rather than a permit fee.

The state's permitting process results in an annual or, at best, a 5 year permit. This is too short a time for banks and loan institutions to provide the hundreds of millions of dollars needed for a modern mill or tailings site.

The goal is to get to a **fair rental value**, rather than a **permit fee**. Permit fees are designed to covering the cost of the permit process, and do not reflect the amount of land used, the nature of the land use, etc.

**Section 8.** Recognizes the new mill site leases are **not** subject to the Title 28 **competitive bid** requirements.

I.e.: US Borax should not compete with Amax for the mill site at Fort Knox.

**Section 9.** Clean-up abandonment procedures. Conforming language.

**Section 10.** Renumbering references.

From changes in Section 2.

**Section 11.** **Repeals** the production license paperwork.

This paperwork is achieved better by the Department of Revenue with the "Mining License" that they issue to all miners under AS 43.65.010 ( see: attachment 5). Attachment 3 & 4 are copies of the statutes being repealed.

**Sections 12, 13, and 14.** Authority to begin regulation changes. Effective Dates. ( Note, we got rid of the need for regulations in original versions of the bill, Section 12 may be redundant.)

## Background and Section by Section analysis of CSHB 46 and proposed amendments.

March 5, 1997

### General:

The concepts contained in CSHB 46 are housekeeping provisions included last session within the Title 38 bill (HB 191). There were no known controversial issues associated with the mining provisions last session. Last December we distributed to all mineral property holders of record our intention to reintroduce these same housekeeping mining provisions this year. No opposition was noted to the proposed reintroduction and no issues associated with the amendments were presented during the recent deliberation by the House on this bill.

Since passage by the House, one comment has been received that the department believes should be incorporated in CSHB 46. This amendment will be discussed in the Section by Section analysis (see Section 5).

The amendments result in no net gain or loss to the state treasury. No new regulations are required. There will be an improvement in the bookkeeping costs to the state and to the mineral property owner. Potential loss of mineral property ownerships and subsequent appeals will be reduced due to the timely payment of the incorrect rental fees associated with mineral properties of different ages. Another potential cloud on producing mines is removed by eliminating the seldom used production license that also duplicates the mining license issued by the department of revenue.

### Sectional analysis:

Section 1 is a technical amendment dealing with the elimination of a production license in Section 11.

Section 2 deletes reference to a production license that is eliminated in Section 11. It also makes it clear that a best interest finding is not mandatory for a mill site lease.

Section 3 is a technical amendment to renumber subsections as a result of Section 1.

Section 4 is a technical amendment to make it clear that a mineral closing order prohibits new mineral locations, but does not stop responsible mineral activities on mineral properties that existed prior to the closing order.

Section 5 brings Alaska law for holding a state-owned mineral property into conformance with similar requirements for other resource businesses. A comment has been received that points out

March 5, 1997

that elimination of subsection (4) "Aliens at least 18 years of age if the laws of their country grant like privileges to citizens of the United States." makes an unwarranted distinction between a foreign business and a foreign person. In researching federal law we find that aliens may hold mineral properties, but cannot get patent to those minerals. Under provisions of the Alaska Statehood Act, the state is prohibited from patenting mineral properties. Accordingly, we recommend that the existing language in AS 38.05.190(a)(4) be retained rather than deleted.

Section 6 amends the way the annual rental for mineral properties are to be adjusted every ten years. Rentals are calculated on the basis of age of each claim or lease starting on September 1, 1989. Under existing law the annual rental fees will be soon adjusted. If we were to make those adjustments today, the \$20 annual rental fee would be \$25.59, the \$40 annual rental fee would be \$51.19 and the \$100 rental fee would be \$127.69. This type of change creates a bookkeeping problem of significant importance to both the state and to the mineral property holder because failure to timely pay the correct annual rental can lead to statutory loss of all or part of the mineral property. The amendment specifies the rental to be calculated to the nearest whole \$5 increment. The change will provide better certainty that the correct courtesy billing has been sent and the mineral property holder has timely paid the correct amount in full. The overall savings to the state will be in the area of bookkeeping and appeals. There will be an increased certainty by the mineral property holder that the properties are not a risk due to an incorrect payment. The overall change of revenue to the state is considered to be minimal since the adjustments will sometimes go to the higher \$5 increment while some will go to the lower increment.

Section 7 makes a technical amendment to change a mill site permit to a mill site lease. A fee will be established that recognizes the limited uses authorized in a mill site lease. It also provides that a mill site may be located on state land that is otherwise not within a state mineral property location or lease.

Section 8 makes it clear that a mill site lease will not be subject to competitive leasing procedures. It is the departments strong belief that it is not in the public interest to have competitive bidding of these sites since the operator of the mine or the mineral property owner have an over riding need to have the mill site lease area to conduct a viable mining operation.

Section 9 incorporates technical amendments in the citations and eliminates the time line for filing a lease application form with the director and also excludes leases from automatic abandonment for the reasons listed.

Section 10 makes a technical amendment to reflect the deletion of a production license.

Section 11 eliminates the production license. The production license is not consistently enforced and is duplicative of the requirements of the department of revenue mining license under AS 43.65.010. The elimination of the production license will reduce paperwork for the state and the mineral industry and at the same time, remove a potential cloud on producing mineral properties.

Section 12, 13, and 14 deal with transition provisions and effective dates.



**STATE OF ALASKA**  
DEPARTMENT OF NATURAL RESOURCES

**JULES V. TILESTON**  
DIRECTOR  
DIVISION OF MINING & WATER MANAGEMENT

3601 C STREET, SUITE 800  
ANCHORAGE, AK 99503-5935

TELEPHONE (907) 263-8600  
FAX (907) 563-1853

March 5, 1997

3



# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

☐ 400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
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☐ 3601 C STREET, SUITE 1210  
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PHONE: (907) 269-8431  
FAX: (907) 269-8918

January 31, 1997

The Honorable Bill Hudson  
The Honorable Scott Ogan  
Co-Chairmen, House Resources Committee  
Capitol Building  
Juneau, AK 99801

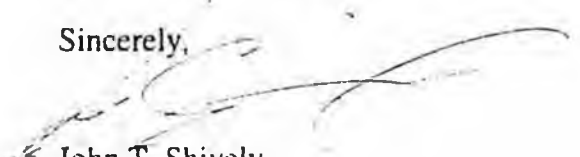
RE: House Bill 46, Related to Mining

Dear Representatives Hudson and Ogan:

The department, on behalf of the administration, is pleased to confirm our support to the changes in Title 38 as amended by the House Resources Committee on January 30th. We appreciate your prompt action in helping government become more efficient by revising outdated sections dealing with mining.

Thank you for your consideration and we urge passage of this bill

Sincerely,



John T. Shively  
Commissioner

cc: Representative Pete Kelly, Representative Gene Therriault

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 46(RES)

1 Page 5, lines 12 - 15:

2 Delete "[ALIENS AT LEAST 18 YEARS OF AGE IF THE LAWS OF THEIR  
3 COUNTRY GRANT LIKE PRIVILEGES TO CITIZENS OF THE UNITED STATES;

4 (5)]"

5 Insert "aliens at least 18 years of age if the laws of their country grant like privileges  
6 to citizens of the United States;

7 (5)"

8 Page 5, line 21:

9 Delete "(5) [(6)]"

10 Insert "(6)"

11 Delete "(1) - (4) [(1) - (5)]"

12 Insert "(1) - (5)"

MAR 04 19

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING AND WATER MANAGEMENT

TONY KNOWLES, GOVERNOR

□ 3601 C STREET, SUITE 884  
ANCHORAGE, ALASKA 99503-5935  
PHONE: (907) 269-8652  
Fax: (907) 563-1853  
E-Mail: kervink@dnr.state.ak.us

February 27, 1997

Mr. James N. Reeves  
Bogle and Gates, P.L.L.C.  
1031 West Fourth Avenue, Ste 600  
Anchorage, AK 99501-5907

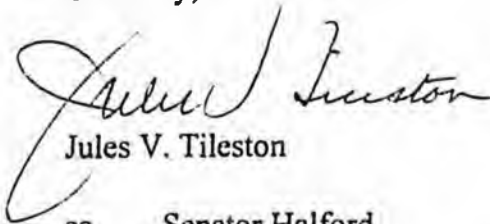
Re: Your letter to me dated February 10, 1997.

Dear Mr. Reeves:

Thank you for your above referenced letter. We have looked into the matter and you are correct that prohibiting individual aliens from acquiring mineral rights under Alaska's mining law while allowing foreign corporations to do so if they are qualified to conduct business in the state is not equitable. We learned that aliens under federal mining law can acquire mineral rights, but may not be granted patented. If alien individuals can acquire mineral rights under federal law they should be able to under state law as well.

As you can see, by this letter we are copying Representatives Therriault and Kelly, and Senator Halford so that they may consider the recommendations in the Senate hearing scheduled for HB 46. I hope it is alright if I attach a copy of your letter to Senator Halford. I believe the hearing may be scheduled for next week sometime. If you have any other thoughts I would appreciate discussing them with you.

Sincerely,



Jules V. Tileston

cc. Senator Halford  
Representative Therriault  
Representative Kelly

Sent Via Facsimile and mail.

# BOGLE & GATES P.L.L.C.

A Professional Limited Liability Company

RECEIVED

FEB 12 1997

*K. Krause*

LAW OFFICES  
JAMES N. REEVES

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Bellevue  
Portland  
Seattle  
Tacoma  
Vancouver, B.C.

February 10, 1997

VIA FACSIMILE AND MAIL  
563-1853

Mr. Jules Tileston  
Director  
Division of Mining  
Alaska Department of Natural Resources  
3601 Street, Suite 800  
Anchorage, Alaska 99503-5935

Re: House Bill 46

Dear Mr. Tileston:

Kerwin Krause directed my attention to HB 46. This bill would make several technical amendments to the provisions of the Alaska Land Act dealing with mining rights. When I reviewed the bill, a question occurred to me about the proposed amendments to the qualification statute (AS 38.05.190(a)) dealing with ownership of mining rights by aliens. The purpose of this letter is to bring this question to your attention so that it can be addressed during the legislative session if you consider that necessary.

Existing law reflects a legislative policy decision that aliens who are citizens of certain countries should be qualified to hold Alaska mining rights, but aliens who are citizens of other countries should not be. AS 38.05.190(a)(3). One can debate the wisdom of that policy, of course; but that is the current policy.

Subsection (a)(5) of the statute limits the class of corporations that are qualified to hold mining claims by excluding from the class corporations that are owned or controlled by aliens who are not themselves qualified. This provision carries forward the policy decision that certain aliens should be allowed to hold Alaska mining rights and certain other aliens should not be. It prevents an alien who would not be qualified to hold mining rights in his individual capacity from evading that provision of the statute by acquiring the mining rights through the vehicle of a corporation. In other words, it prevents this class of aliens from doing indirectly (i.e., by means of a corporation) what they are not allowed to do directly. The subsection limiting alien ownership and the subsection limiting corporation ownership are congruent in this respect.

Mr. Jules Tileston  
February 10, 1997  
Page 2

The proposed amendments to AS 38.05.190(a) set forth in Section 2 of HB 46 would change these provisions; but they would do so in two inconsistent ways. First, the provision under which some aliens may be qualified to hold mining rights would be deleted altogether. If the law were amended in this manner, then no aliens whatsoever would be permitted to acquire and hold mining rights unless they had "declared their intention to become citizens of the United States" under AS 38.05.190(a)(3). The distinction made by the current statute between the category of aliens who are qualified to hold mining rights and those who are not qualified to hold mining rights would be eliminated. None of them would be qualified.

That is a reasonable policy choice; and although reasonable people might disagree about its wisdom, the proposed amendment makes sense. However, the other proposed amendment to the qualification statute is inconsistent with it. That amendment would delete the limitation on the qualification of corporations based upon ownership or control by aliens. If the law were amended in this respect, an alien strictly prohibited by subsection (a)(3) from acquiring mining rights in his own name could readily evade that requirement by forming a corporation to acquire and hold the rights. In other words, the complementary relationship between subsections (a)(3) and (5) under current law would be disrupted and the subsections would operate at cross-purposes.

It seems to me that a legislator who favored prohibiting aliens from owning mining rights would want to make sure that the provision allowing corporations to own mining rights cannot be used by aliens as a vehicle for evasion of that policy. Likewise, it seems to me that a legislator who favored a policy allowing corporations owned or controlled by aliens to hold mining rights would also favor permitting the aliens to own them personally, rather than requiring that they be owned through corporations. Either of these two alternative policy positions would be coherent. The two amendments proposed in House Bill 46, however, are not consistent with either of these two alternative policy positions. Either aliens should be allowed to own or control mining rights in Alaska lands, or else they should not be allowed to do so. Present law addresses that policy issue in a consistent manner, albeit in a manner that many consider to be the wrong policy. If the policy is to be changed, the statutory amendments used to make the change should be consistent with the new policy. The provisions of House Bill 46 are not consistent.

For the record, I am offering this comment as an individual interested in sound natural resources legislation. I am not speaking as a representative or advocate of any client.

If you have any questions please feel free to call.

Yours very truly,

BOGLE & GATES P.L.L.C.



James N. Reeves

cc: Representative Peter Kelly  
Representative Gene Therriault  
✓ Kerwin Krause

BOGLE & GATES P.L.L.C.



# ALASKA MINERS ASSOCIATION, INC.

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

March 17, 1997

Honorable Rick Halford  
 Chairman, Resources Committee  
 Alaska State Senate  
 Capitol Building  
 Juneau, AK 99801

RE: House Bill 46, Relating to Mining

Dear Senator Halford,

Thank you for the opportunity to comment on House Bill 46 which is now in your Senate Resources Committee in the form of CSIB-46(RES). This bill makes several housekeeping changes to the mining statutes and is supported by both the Department of Natural Resources and the Alaska Miners Association. We have worked with DNR over the past couple years to develop these changes which will clarify the existing statutes and change some items that could inadvertently become stumbling blocks for miners. Because DNR and industry are in agreement on these changes there has been no controversy over this bill.

It has been suggested that two other items be added into IIB-46. One involves some minor changes to the mineral exploration incentive credit statute that became law in 1995 and the other involves the designation of approximately 540 acres in the Petersville Mining District as a State Recreational Mining Area. We support both of these potential changes.

The changes proposed to the mineral exploration incentive credit (MEIC) statute have been requested by DNR Commissioner John Shively in an effort to reduce the paperwork required to administer the MEIC. Working with DNR, we were able to develop some changes that would reduce their paper workload while at the same time retaining the flexibility for the miner. These changes have been introduced as House Bill 173 by Representative Richard Foster. One other aspect in this bill is that it establishes a fee (specific set amount not variable) for processing the MEICs. We are typically opposed to such fees but in this case feel it is appropriate and it is being included in a way that will encourage the miner to process several years of investment credits at the same time, thus reducing the paper workload for DNR. There are no material changes in the statute for either the state or the industry the cost for both sides should be reduced.

The second item relates to the Petersville Recreational Mining Area. It has been suggested that two areas totalling about 540 acres be designated as a recreational mining area similar to the Caribou Creek Recreational Mining Area located at milepost 104 on the Glenn Highway. The 540 acres are part of an area of federal mining claims that were abandoned and is now being transferred to State ownership. It is a rare situation when quality mining ground is available for such a Recreational Area and is also situated in an area that is accessible for the public. There is great need for more locations where recreational mining can occur and this area will help fill this need.

The Alaska Miners Association and the DNR support the changes to the investment incentive credit and the establishment of a Petersville Recreational Mining Area. Both Representative Kelly, sponsor of HB-46, and Representative Foster, sponsor of HB-173, are amenable to including these items in HB-46. Our only concern is that each and all of these items move forward. We do not foresee any controversy with any of the three parts (housekeeping changes, incentive credit changes, or recreational area) moving together but if this were to develop a controversy we would encourage three separate bills.

Thank you for your consideration of these matters. If we can answer any questions or be of any further assistance please contact me.

Sincerely,



Steven C. Borell, P.E.  
Executive Director

- cc: Representative Pete Kelly
- Representative Richard Foster
- Commissioner John Shively

## Background and Section by Section Analysis of HB 173

March 5, 1997

### General:

AS 27.21.120 (Small Operator Assistance) provides for federal grants to be available for the development of small coal mines in Alaska. The federal grant program, on which the Alaska program is based, was expanded in 1994 to allow federal moneys to be used for more elements of a coal mine permit and increased the size of an eligible coal mine for this program. The amendments are housekeeping and will bring the Alaska program into agreement with the expanded federal grant program. No state funding is associated with this amendment and we have an existing application under current state law. Without the amendment, the applicant, Alaska Power and Telephone Company, will not be able to take full advantage of the expanded federal grant program.

AS 27.30.020 et seq. established an Exploration Incentive Credits program to encourage development of new or reopened mines in Alaska. The existing program requires mandatory annual filing and mandatory annual decisions by the commissioner. The fiscal note attached to the original legislation was not funded. Accordingly, the department is faced with expenditure of funds allocated for other mining work in order to avoid the automatic approval section of law that falls into place should the commissioner take no action. In the first partial year of the program, the department received 33 applications involving \$13.3 million in exploration credits that would have been final without further action. This would have placed the department and the mining companies at risk of litigation involving significant dollar amounts and would have sent a message to the industry that the state is not prepared to fulfill its obligations to encourage environmentally responsible development and jobs for Alaskans. The proposed amendments have been developed in cooperation with the mining industry, Alaska Miners Association, and the department of revenue. The substance of these amendments were introduced last session with the full support of the administration. The proposed amendments eliminate the annual filing/approval process and replace it with an application process that incorporates monetary or transfer of prospective exploration credits as thresholds for application. To reduce the cost to the state for credit approval process a requirement that a certified public accountant (CPA) provide a statement whenever the exploration costs for an individual mineral property equal or exceed \$40,000 in any one year. Application fees have been coordinated with the Alaska Miners Association and are based on the fact that there will be CPA review of the larger requests for credit.

### Sectional analysis:

Section 1 is a technical amendment to AS 27.21.100(b) that provides that non-confidential data

March 5, 1997

collected under the federal grant is to be available to the public.

Section 2 is a housekeeping amendment to AS 27.21.120 that increases the definition of a small coal mine for certain federal grants from an annual production of 100,000 tons to 300,000 tons annually. The amendment further conforms existing state law to the federal grant program that was expanded on May 31, 1994. Alaska Power and Telephone Co. has an application pending to develop detailed data required to obtain a state coal mine permit for a part of the Jarvis Creek Coal Field that it has under a state coal lease. Under existing Alaska law, the federal grant can only be used for determination of hydrologic conditions and test and/or bore samplings. The new section will allow the federal grant to also be used for developing a blasting plan, cross-section maps and plans of the coal deposit to be mined, archeological and historic information, and site specific resource information including fish and wildlife and subsistence and any other important environmental values associated with the proposed coal mine.

Section 3 is a technical amendment providing for concurrent preparation of the reclamation plan for the mine site.

Section 4 contains a series of housekeeping amendment to AS 27.30.020 that delete the annual statutory filing date and a statutory date the annual certification decision process by the commissioner. In its place it establishes thresholds for filing (expenditures are at least \$250,000 or the person is ready to take the entire balance of the credit), and requires a statement from a certified public accountant whenever the credit in any one calendar year equals or exceeds \$40,000 for a single mining operation. The existing statutory date for commissioner decision is replaced with a period of six months from the date of filing. The commissioner will have 60 days to approve the taking of the credit when all of the credits are contained within prior certifications. Finally the commissioner will have 30 days after delivery of the exploration data that was developed as part of the exploration credit program to notify the Department of Revenue that the credit has been approved. Applications are to be on a form provided by then department.

Section 5 establishes a new subsection, AS 27.30.025 for a conditional certification process. This new subsection recognizes that there may be innovative exploration techniques, that there may be a substantial question about the nature of the exploration data to be delivered to the department, or there is a substantial question about exploration expenditures that are being transferred to another person. Except for when the ownership of credits are being considered, the conditional certification process will be at a lesser standard of review than for an application for credit because it deals with subjective rather than factual matters. Accordingly, the department's conditional decision is subject to final approval at the time the person applies under the provisions of Section 4, above. The conditional certification application is to be on a form provided by the department.

Section 6 is a technical amendment to make it clear that the total amount of credit cannot exceed \$20 million.

Section 7 creates a new section AS 27.30.095 fees. The fees were developed in cooperation with the mining industry and are based on the amount of the credits being applied-for: \$500 if the total amount is \$1 million or less and \$1,000 if more than \$1 million. The fee structure recognizes that a statement by a certified public accountant will accompany each expenditure that equals or exceeds \$40,000 for a mineral property in any one year. Conditional certifications associated with innovative techniques or the nature of the exploration data is in question will be done without charge as part of the department's ongoing technical assistance program. A conditional certification associated with the change of ownership of exploration costs will be subject to the fees above.