

HB

319

Representative
HUGH "BUD" FATE
Finance Committee

Energy Council- Executive Committee
119 N. Cushman St. Suite 213
Fairbanks, Alaska 99701
(907) 452-6084
Fax: (907) 452-6096

Alaska State Legislature



While in Session
State Capitol, Room 501
Juneau, Alaska 99801-1182
(907) 465-4976
Fax: 465-3883
Toll Free: 1 866-465-4976
House District 7

House of Representatives Sponsor Statement

CS for HB 319

"An Act relating to the disposal of state land by lottery; and relating to the disposal, including sale or lease, of remote recreational cabin sites."

CS HB 319 is legislation to help move Alaska State land into the hands of private individuals. Presently, Alaska holds millions of acres of remote area land that is generating no revenue for the state, or local nearby governments.

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CS HB 319 makes good economic sense for state government, local government, Alaska businesses and Alaskans. It will generate a source of revenue, and fulfill a promise to those Alaskans who want that remote cabin, a place to escape, to hunt and fish, or simply enjoy a mini-vacation. Passage will expand the opportunity to satisfy the dream of Alaskans by allowing them to secure in fee simple, a favored piece of property in a setting that epitomizes the reason we live in Alaska: to enjoy its wildlife, its beauty and its solitude

23-LS0477AS

Bullock

2/25/04

CS FOR HOUSE BILL NO. 319()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES FATE, Wolf

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the disposal of state land by lottery; relating to the reservation of
2 rights by the state in land contracts and deeds; and relating to the disposal, including
3 sale or lease, of remote recreational cabin sites."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 38.05.057(a) is amended to read:

6 (a) The commissioner may dispose of land, including land limited to use for
7 agricultural purposes, by lottery. The purchase price of land sold by lottery shall be
8 the fair market value of the land as determined by the commissioner. The
9 commissioner may sell land by lottery for less than the fair market value of the land on
10 a determination that scarcity of land for private use in the area of the land to be sold
11 has resulted in unrealistic land values. The lottery shall be conducted in public by the
12 commissioner. A purchaser selected by lot shall deposit an amount equal to 10 [FIVE]
13 percent of the purchase price within 30 days after receiving notification of the
14 selection.

1 * Sec. 2. AS 38.05.125(a) is amended to read:

2 (a) Each contract for the sale, lease, or grant of state land, and each deed to
3 state land, properties, or interest in state land, made under AS 38.05.045 - 38.05.120,
4 38.05.321, 38.05.600, 38.05.810 - 38.05.825, AS 38.08, or AS 38.50, except as
5 provided in AS 38.50.050, is subject to the following reservations: "The party of the
6 first part, Alaska, hereby expressly saves, excepts, and reserves out of the grant hereby
7 made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores,
8 minerals, fissionable materials, geothermal resources, and fossils of every name, kind,
9 or description, and which may be in or upon said land above described, or any part
10 thereof, and the right to explore the same for such oils, gases, coal, ores, minerals,
11 fissionable materials, geothermal resources, and fossils, and it also hereby expressly
12 saves and reserves out of the grant hereby made, unto itself, its lessees, successors,
13 and assigns forever, the right to enter by itself, its or their agents, attorneys, and
14 servants upon said land, or any part or parts thereof, at any and all times for the
15 purpose of opening, developing, drilling, and working mines or wells on these or other
16 land and taking out and removing therefrom all such oils, gases, coal, ores, minerals,
17 fissionable materials, geothermal resources, and fossils, and to that end it further
18 expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and
19 assigns forever, the right by its or their agents, servants, and attorneys at any and all
20 times to erect, construct, maintain, and use all such buildings, machinery, roads,
21 pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such
22 soil, and to remain on said land or any part thereof for the foregoing purposes and to
23 occupy as much of said land as may be necessary or convenient for such purposes
24 hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid,
25 generally all rights and power in, to, and over said land, whether herein expressed or
26 not, reasonably necessary or convenient to render beneficial and efficient the complete
27 enjoyment of the property and rights hereby expressly reserved. Filing of a claim for
28 relief by an owner against the state or a person entering, opening, developing,
29 drilling, and working mines or wells on these or other lands, not based on
30 physical damage to the owner's land, that hampers these reservations constitutes
31 a breach of this contract and will result in an immediate assessment against the

1 owner for a penalty equal to 150 percent of the current appraised value of the
2 land, including the value of improvements. Failure to pay this assessment will
3 result in foreclosure proceedings by the state.

4 * Sec. 3. AS 38.05.125 is amended by adding a new subsection to read:

5 (d) The owner of land subject to the reservation under (a) of this section, who
6 brings suit against a person, including the state, for entering the land for the purpose of
7 opening, developing, drilling, and working mines or wells on the land or adjacent
8 lands, is subject to a penalty for breach of contract equal to 150 percent of the
9 appraised value of the land. The penalty does not apply if the suit is based solely on
10 physical damage to the owner's land. The penalty is a lien in favor of the state upon
11 the property of the owner subject to the reservation under (a) of this section and arises
12 at the time suit is filed. The commissioner may bring a foreclosure proceeding if the
13 penalty is not paid within 60 days after the owner files suit. In this subsection,
14 "appraised value of the land" means the current appraised value, including the value of
15 improvements.

16 * Sec. 4. AS 38.05.600(a) is amended to read:

17 (a) The commissioner may provide for the sale or lease of state land for
18 remote recreational cabin sites. Sales under this section shall be at fair market value
19 determined as of the time of entry by the department or by an appraiser from the
20 list of appraisers approved by the department. Land to be sold under this section
21 shall be surveyed before sale by the department or by a surveyor registered
22 under AS 08.48. The appraisal and survey shall be completed within 24 months
23 of entry. The [, AND THE] purchaser shall pay for the appraisal and survey or
24 reimburse the state for the appraisal, survey, and platting costs for the recreational
25 cabin site. Sales under this section may be at public or private sale under (g) of
26 this section.

27 * Sec. 5. AS 38.05.600 is amended by adding new subsections to read:

28 (d) Each year, subject to appropriation from the state land disposal income
29 fund under AS 38.04.022, to implement this section, the commissioner shall

30 (1) prepare a schedule of land offerings under this section and identify
31 the parcels for disposal each year; the land offerings may not include mineral land

1 selected by the state or lands identified by the department as having a high mineral
2 potential; the department's identification of land having a high mineral potential shall
3 be based on standards adopted by the department in regulations and shall include
4 consideration of a geophysical survey or geological evaluation, if any, that was
5 conducted within 15 calendar years before the year for which the schedule is prepared;
6 and

7 (2) provide public notice of the proposed land offerings.

8 (e) The space between remote recreational cabin sites offered under this
9 section may not be less than 660 feet in any direction.

10 (f) The commissioner may solicit nominations each year from the public for
11 areas to be offered for disposal under this program. The commissioner may add areas
12 nominated by the public to the schedule prepared under (d) of this section if the land is
13 classified for disposal or the disposal is consistent with other requirements of
14 AS 38.04 and this chapter.

15 (g) A person may nominate a parcel for disposal under this section and request
16 a right of first refusal. If the commissioner accepts the nomination of a parcel for
17 disposal, the commissioner may also provide for disposal of additional parcels in the
18 surrounding area, subject to (d)(1) and (f) of this section.

19 (h) A parcel sold under this section may not exceed five acres. A parcel sold
20 under this section may include lake, river, or other navigable water frontage, subject to
21 the following limitations:

22 (1) the lake, river, or other navigable water frontage must be at least
23 300 feet and may not exceed 400 feet;

24 (2) only one parcel with frontage on a lake may be sold under this
25 section for each five acres of water of that lake unless, in the public interest, the
26 commissioner adopts a regulation indicating a different ratio of water to each parcel
27 with frontage;

28 (3) a parcel sold under this section with frontage on a river must be
29 located at least one-quarter of a meander mile from any other parcel with river
30 frontage sold under this section; and

31 (4) a parcel sold under this section is subject to 16 U.S.C. 3101(d) and

1 16 U.S.C. 3213 (Alaska National Interest Lands Conservation Act).

2 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **APPLICABILITY.** Sections 2 and 3 of this Act apply to contracts entered into on or
5 after the effective date of this Act.

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 319(STA)
 (H) Publish Date: 2/23/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title: Remote Rec Cabin Site Sales/ RDU: Resource Development
Lottery Sale Component: Land Sales/Municipal Entitlements
 Sponsor: Rep. Fate
 Requester: (H) STA Component No.: 2456

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	368.0	368.0	368.0	368.0	368.0	368.0
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	30.0	30.0	30.0	30.0	30.0	30.0
Supplies	15.0	15.0	15.0	15.0	15.0	15.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	433.0	433.0	433.0	433.0	433.0	433.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1153)					82.6	112.8
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	433.0	433.0	433.0	433.0	350.4	320.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (1153 Land Disp Income Fund)					82.6	112.8
TOTAL	433.0	433.0	433.0	433.0	433.0	433.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	6	6	6	6	6	6
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill establishes a new land disposal program within AS 38.05.600. It leaves the existing Remote Recreational Cabin Program under that statute in place. This fiscal note analyzes the impacts of the proposed program.

The new program would have DNR negotiate private, non-competitive sales. (This is a significant change from the existing policy of only public, competitive land sales.) It also adds a maximum size restriction of 2.5 acres and establishes other guidelines regarding parcel locations.

Prepared by: Nancy Welch, Special Assistant to the Commissioner Phone 907-269-8431
 Division: Commissioner's Office Date/Time 1/28/04
 Approved by: Thomas Irwin, Commissioner Date 1/28/04
 Agency: Natural Resources

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 319(STA)

ANALYSIS CONTINUATION

Purchase Rate. In the current program, only 43% of people issued staking authorizations go on to purchase their parcels. The remainder decide not to continue somewhere during the process. The Department is working to bring up the purchase rate. However, this rate is actually greater than similar historical programs. The Department's homestead/homesite programs allowed people to gain ownership through either purchase or prove-up. Only 33% of the people who initially sought parcels followed through to ownership: two-thirds dropped out. It is possible that those who apply in the program proposed by this bill will have a higher purchase rate than past programs. However, individuals do not understand the major cost in time and money until they try to hire a surveyor and appraiser, and so the purchase rate may actually be lower. This fiscal note assumes a 66% purchase rate or 100 parcels per year.

Financing. The bill assumes current practice for financing: approximately 20% of applicants purchase outright and 80% finance their purchase over 10 years. The current interest rate is 7%.

Schedule. Section 3 of the bill does not change DNR's existing survey and appraisal practice but requires that both be completed within one year. Currently, the Department contracts with private surveyors on behalf of the individuals and is able to complete the survey and appraisal process within two years. Our experience is that individuals who are unfamiliar with surveyors and appraisers take far longer. Thus, the Department believes that the minimum time for the process is two years: one for summer for survey (survey instruction from DNR, survey by a private contractor, then review by DNR), and a second for appraisal (instructions from DNR, appraisal by a private contractor, then review by DNR). Therefore, the minimum schedule is as follows: FY 05 to prepare the regulations and information for the public. The first applications could occur in FY 06 with one year for DNR processing (title search, best interest finding, public notice, etc.). Survey could occur in FY 07; appraisal in FY 08, and revenue would begin when parcels are purchased in FY 09.

Summary. In summary, total value sold will be \$295,000 (100 parcels x \$2,950 per parcel). Of that amount \$82,600 will be paid the first year (\$59,000 through full purchase plus \$23,600 downpayment on the remainder). An additional \$30,240 will be paid each year through the following 10 years as individuals pay off the parcels. Therefore, the first year of revenue will occur in FY 09 and will be \$82,600. In FY 10, revenue will be \$112,840 (= \$82,600 + \$30,240).

Technical Issues. This bill *does not* repeal the current program: Section 4(f) appears to provide that it continues. Therefore, this fiscal analysis assumes the existing program continue at its present level. However, the bill would put the current program out of compliance with the law. To maintain the current program, Sections 4(e) and (h) should apply only to the new program: that outlined in Section 4(g).

If the new program *does* replace the existing program, the required additional cost would be somewhat less than outlined in this fiscal note as current staff could implement the new program (with some additions). However, total revenue to the state would be much less than indicated in the fiscal note, as the existing program is a much more cost-efficient and revenue-efficient method to offer lands to Alaska. The Department is currently preparing this financial information, and it should be available within the next week.

Also, the bill mandates that survey and appraisal is completed in one year. As outlined above, many years of experience with this issue shows a one-year schedule to be almost impossible. A more realistic expectation is 2 to 5 years. Based on DNR's current practice, the minimum time to accomplish these tasks is two years: one for survey and one for appraisal. Therefore, the requirement in Section 3 (line 2 of page 3) should be removed.

AS 38.05.600. Remote recreational cabin sites.

(a) The commissioner may provide for the sale or lease of state land for remote recreational cabin sites. Sales under this section shall be at fair market value determined as of the time of entry, and the purchaser shall reimburse the state for the appraisal, survey, and platting costs for the recreational cabin site.

(b) The annual fee for a remote recreational cabin site lease shall be set by the commissioner so as to ensure that the state receives a fair return for the use granted by the lease for the term of the lease. The commissioner shall establish regulations that specify the application procedures for and the terms and conditions of a remote recreational cabin site lease. A lease must be for a term of not more than five years, and may be renewed for one additional five-year period. At any time during the lease, the lessee may purchase the remote recreational cabin site by having the site appraised and surveyed in a manner acceptable to the department and by paying to the state the fair market value for the site determined as of the time of entry. The lease may not be assigned by the original lessee during the term of the lease.

(c) A remote recreational cabin site lease may be terminated by the commissioner before the expiration of the term of the lease if a lessee fails to use the land under lease in the manner required by the terms of the lease. After termination of a remote recreational cabin site lease, improvements or personal property on the land subject to the lease shall be managed in the same manner as required by AS 38.05.090 .

AS 38.05.090. Removal or reversion of improvements upon termination of leases.

(a) Unless otherwise agreed to in writing by the commissioner, a lessee shall remove from a former leasehold

(1) all personal property, including above-ground tanks, transportable buildings, equipment, machinery, tools, and other goods, not belonging to the state, within 30 days after termination of the lease; and

(2) all buildings and fixtures, including gravel pads, and below-ground tanks, foundations, and slabs, not belonging to the state, within 60 days after termination of the lease.

(b) Unless otherwise agreed to in writing by the commissioner, the lessee shall restore the leasehold to a good and marketable condition, acceptable to the commissioner, within 120 days after termination of the lease.

(c) If the lessee does not remove personal property, buildings, and fixtures as required within the time specified under (a) of this section, title to the personal property, buildings, and fixtures that remain automatically vests in the state unless the commissioner elects to remove and dispose of the remaining personal property, buildings, and fixtures of the lessee. The commissioner may assess upon the lessee the cost of removing and disposing of personal property, buildings, and fixtures remaining upon the land.

(d) If the lessee does not restore the land within the time period specified under (b) of this section, the commissioner may have the land restored and assess the costs upon the lessee.

(e) As part of a lease agreement, and in order to protect the public interest, the commissioner may require terms for removal or reversion of improvements additional to those specified in (a) - (d) of this section.

(f) Private residential improvements of a lessee that have become fixtures of the land and that are not removed by that lessee upon termination of the lease shall be purchased by the subsequent purchaser of the land if the improvements were authorized in the former lease or by permit from the director and if they have a net value of more than \$10,000. The net value is the value of the improvements as determined by an appraisal approved by the commissioner, less all rents due the department, all costs of restoration under (d) of this section, and all department expenses estimated to be incurred in making the sale. After termination of the former lessee's lease, and at additional times as determined necessary by the commissioner, the value of the authorized residential fixtures shall be determined by an independent appraisal made at the cost of the former lessee. A notice or offer by the state to sell formerly leased land under this subsection must state (1) the appraised value of authorized residential fixtures remaining on the land that must be purchased, and (2) that that cost is included in the purchase price. Out of the proceeds of the sale, the department shall pay to the former lessee the appraised value of the residential improvements, less all rents due the department, all costs of restoration due the department under (d) of this section, and all department expenses incurred in making the sale.

(g) Personal property described in (c) of this section is not subject to AS 34.45 (Uniform Unclaimed Property Act).

AS 38.05.127. Access to navigable or public water.

(a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,

(1) determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The department shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.

(e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.

(f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.

(g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

Sec. 38.05.128. Obstructions to navigable water.

(a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is

(1) authorized by a federal agency and a state agency;

(2) authorized under a federal or state law or permit;

(3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);

(4) caused by the normal operation of freight barging that is otherwise consistent with law;

or

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

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

(c) This section may not be construed to affect or abridge valid existing rights.

(d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.

(e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided

(1) entry is made without injury or damage to the land;

(2) entry is made in the least obtrusive manner possible;

(3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and

(4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.

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

Fact Sheet

Title: Land Ownership In Alaska



Division of Mining, Land & Water
March 2000

Current land ownership in Alaska can be traced back to three main events in the state's history.

- ◆ Russian traders arrived in Alaska in the mid-1700's and established small, scattered trading posts and settlements. Alaska Natives (the Eskimo, Indian, and Aleut peoples) continued as the primary "landowners" during this period of Russian occupation.

On October 18, 1867, Russia sold Alaska to the United States government. As a result, the federal government owned the Alaska Territory, approximately 375 million acres (about one-fifth the size of the continental U.S.).

- ◆ Alaska became a state in 1959. The federal government granted the new state 28% ownership of its total area. Approximately 103,350,000 acres were selected under three types of grants: Community (400,000 acres), National Forest Community (400,000 acres), and General (102,550,000 acres). Additional territorial grants, for schools, university and mental health trust lands, totaling 1.2 million acres were confirmed with statehood. All grants combined gave the State of Alaska approximately 105 million acres.
- ◆ In 1971 Congress passed the Alaska Native Claims Settlement Act (ANSCA). This law granted 44 million acres and 1 billion dollars to village and native corporations created under the act. Generally, ANSCA gave Native selections priority over state land selections.

State Land

To date, the state has received patent to approximately 85% (90 million acres) of its total land selections. The state was permitted to select lands, from any federal land not already reserved for other uses, to provide:

1. Land and resources to support the state's economy for road construction, economic development, and building houses, schools, and other public and private facilities.
2. A reduction in federal control over state internal affairs by giving the state ownership and jurisdiction over its own land.

The state chose land to meet three specific needs - settlement, resources and recreation.

Settlement – The State of Alaska selected land to encourage development and settlement. Land for public facilities, road construction and other public needs were included. Once owned, the state transfers large tracts of land to local governments, and leases and disposes of land to the private sector. There are approximately 580,000 acres currently in the state's land disposal bank for eventual lease or sale.

Resources - The Alaskan economy is based on exploration for and the development of natural resources. Lands were selected for agriculture, forestry, commercial fisheries, mining potential, oil and gas development, and wildlife habitat.

Recreation – Lands for wildlife, back-country recreation, and varying degrees and types of developed recreation were chosen and reserved to provide a variety of experiences for Alaskans and the tourist industry.

Once land is selected, land planners develop state land use plans. Planners consider laws and policies set by the Governor and state legislature, the character of the land itself, recommendations made by resource experts and public input to determine the most appropriate management of currently owned or selected state land. Plans are developed for land in selected status in anticipation of its conveyance to the state.

Federal Land

The federal government is still the largest landowner in Alaska with 60% of the total area (222 million acres). This acreage includes national parks, wildlife refuges, national forests, military reservations and the North Slope National Petroleum Reserve. More than a dozen federal agencies manage federal lands in Alaska.

The majority of federally owned lands have been set aside for public use (approximately 80 million acres). These are designated as follows:

- The National Park Service and Fish and Wildlife Service manage about 119.3 acres (48.3 and 71.0 million acres respectively) for primary uses of resource protection and fish and wildlife conservation.

The Forest Service and Bureau of Land Management manage about 97.7 million acres (19.8 and 77.9 million acres respectively) for multiple use purposes including timber production, fish and wildlife, recreation, water and mining. Management of these lands is based on priorities and compatibility among various uses.

The remaining federal land is designated for special purposes, such as military reservations, the National Petroleum Reserve and U.S. Postal Service lands.

Native Lands

Native lands are private lands. The Alaska Native Claims Settlement Act, passed by Congress in 1971, mandated the creation of regional and village Native corporations for the disbursement of the 44 million acres and payment of one billion dollars mandated to Native ownership.

Thirteen regional corporations were created for the distribution of ANSCA land and money. Twelve of those shared in selection of 16 million acres, the thirteenth corporation, based in Seattle, received a cash settlement only. 224 village corporations, of 25 or more residents, shared 26 million acres. The remaining acres, which include historical sites and existing native-owned lands, went into a land pool to provide land to small villages of less than 25 people.

Other Private Land

Land in private ownership (other than Native land) comprises less than one percent of the total land in Alaska. Much of the best land for development around Alaska's communities is, or will be, privately owned. Private land development meets people's needs by providing places to live, work, shop and recreate. It also provides a tax base for cities and communities to help support public services.



HB 319 House State Affairs

810 N St, Ste 203, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177
PO Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / www.acvoters.org

To: Members of the House State Affairs Committee
From: Matt Davidson, Legislative Director for the Alaska Conservation Voters
Date: February 2, 2004
Subject: HB 319

HB 319 establishes a new land disposal program within the Department of Natural Resources (DNR) that allows state residents the exclusive right to purchase state lands which they have three consecutive years of prior recreational use. HB 319 is very similar to HB 233, considered in the 22nd Legislature. During testimony on HB 233 (22nd), the Department of Natural Resources enumerated many concerns with the legislation. Given these and other problems with HB 319, this bill should not move from the House State Affairs Committee.

HB 319 Gives Exclusive Purchase Rights

The proposed program strays from all existing land sale programs by giving individuals the exclusive right to purchase state resources. The vast majority of existing state land sales are currently made through either an auction and/or lottery systems. (Sect 3. (a))

HB 319 Encourages Trespass

The program would encourage people to build illegal cabins and other structures to help demonstrate their use of the land, thereby qualifying for the program. (Sect 4. (g))

HB 319 Allows Misuse of Mining Claims

The existing mining law has a well established criterion for the legitimate granting of title to holders of mining claims. The program described in HB 319 (Sect 4. (g)) undercuts the current program and could make mining claims a backdoor to gain land not available to all Alaskans.

HB 319 Invites Conflict between Potential Owners, Users

HB 319 doesn't contain a mechanism to deal with conflicts between potential owners and other users of individual recreational lands. Under the bill, DNR will give a preference to the first applicant who establishes recreational use. It is not difficult to imagine a scenario where one user with three annual trips to a prime recreational location would beat out another potential owner with 30 years of use of the same parcel or a business who has a state permit to use the parcel. HB 319 contains no direction of how to settle conflict between potential owners, users.

HB 319 Is Costly/Cumbersome to the State of Alaska

The self selection provision outlined in HB 319 will result in individuals applying for isolated and scattered parcels. Under the current state land sale program, DNR groups parcels and offers them as well planned clusters. The program requires one title check, one best-interest finding and so on, proving to be more efficient than the proposed exclusive-right program.

Alaskans building a better future.

Representative
HUGH "BUD" FATE
Finance Committee
Energy Council-Executive Committee
119 N. Cushman St. Suite 213
Fairbanks, Alaska 99701
(907) 452-6084
Fax: (907) 452-6096


Alaska State Legislature



While in Session
State Capitol, Room 128
Juneau, Alaska 99801-1182
(907) 465-4976
Fax: 465-3883
Toll Free: 1 866-465-4976
e-mail:
Rep_Hugh_Fate@legis.state.ak.us
House District 7

House of Representatives

Memorandum

To: House State Affairs Committee
Fm: Representative Hugh Fate 
Cc: Alaska Conservation Voters (via fax)
Date: February 3, 2004
Re: Alaska Conservation Voters Memo on HB 319 & Proven High Mineral

As requested by the Committee I would like to take this opportunity to response to Alaska Conservation Voters Memo on HB 319, submitted by Matt Davidson, Legislative Director on February 2, 2004.

The H version of HB 319 is language that existed in CS for HB 232 (RES) and served as a starting point based on discussions and amendments from the 22nd Alaska Legislature. I felt that this offered a better starting point for this legislature as some of the concerns had already been answered and resolved.

As the Memo was written prior to the amendments adopted as the CS for State Affairs I believe that the issues of, or at least a definition of, Exclusive Purchase Rights, Trespass, and Misuse of Mining Claims have been addressed.

Under the reference and scenario Invites Conflict: to a certain extent that concern has also been addressed in the amendment "...and request a right of first refusal." Since it is only a request, should the scenario conflict arise, the decision will be up to the Commissioner of DNR for resolution. Business issues are already addressed in statute:

AS 38.05.035 Powers and duties of the director states:

(f) **The director shall grant a preference right** to the purchase or lease **without competitive bid** of up to five acres of state land to an individual who has erected a building on the land and used the land for **bona fide business purposes** for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business

produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (emphasis added)

Costly and Cumbersome to the State of Alaska

As the Fiscal note indicates, an annual cost of \$433,000. I concur that those numbers are very close to reality. What the fiscal note does not address, in part because it was generated prior to the proposed amendments, are the advantages to, and therefore the increase in interest of these remote cabin sites. Presently, the Department offers land through the lottery, auction or over the counter sale. Much of the land currently being offered is either extremely remote with very limited access, or has inherent problems to topography to include wetlands. HB 319 will change that by allowing the public to identify sites that are preferred, and are of a more practical and economical size. This preference process will assist the Department by letting them know what people want. As indicated in the fiscal note, the price per acre will increase because of a simple supply and demand scenario meaning the land will have a higher value, conservatively between \$1,000 and \$1,500 per acre or \$5,000 to \$7,500 per site. I believe that once this program is in place the annual statewide demand could exceed 1,000 sites with a higher percentage of sites actually staked. Also because of a better quality of land, there will be a decrease in defaults. Essentially, the income for the state will far exceed the costs. I have attached some scenarios for your consideration.

Adversely Effects Wildlife

The wildlife impact is negligible as the five-acre site, combined with buffer zones both in existing statutes and this bill will eliminate an urban type private development situation. Under private ownership, people traditionally treat the wildlife on their property with more, not less respect. In many cases occasional campers are not necessarily the best stewards of the land they use, leaving signs of their visit behind or are there for the specific reason of hunting and fishing.

Expense and Threat of Forest Fires

The current policy of protecting remote cabins from forest fires is to say the least a nice gesture on behalf of firefighters, when in fact there is no requirement to do so.

AS 38.04.010 Public interest in making land available for private use.

(b) State land that is located beyond the range of existing schools and other necessary public services, or that is located where development of sources of employment is improbable, may be made **available for seasonal recreational purposes or for low density settlement**. The seasonal recreation use or low-density settlement shall have sufficient separation between residences so that **public services will not be necessary or expected**. The availability of timber, firewood, and water resources shall be considered in determining separation between residences. By considering the availability of timber, firewood, and water under this subsection or in making any disposal decision, the state does not by virtue of that consideration imply any right of the person receiving the disposal to an exclusive or other right to the timber, firewood, or water, that the state will not make any other disposals in the area, or that any disposals made will be limited in type or any other manner.
(emphasis added)

Again I would suggest that occasional campers with open fires pose a more serious threat of wildfire, as they have no vested interest in the land nor do they have a permanent type structure to protect.

Conflicts with Municipality acreage

Rules and regulations restricting the size of borough land sites within a borough are applicable on borough owned land. The state presently owns millions of acres that are not within an organized borough. Eventual determination of borough issues should be left in the hands of the land experts on both sides. Should a borough chose to lose the potential property tax base, then that decision is and should be up to the local assembly.

Consents to Selling Land for less than market value

This is language already in existing language and is only referenced in this bill to increase the amount of deposit from five to 10 percent. I believe the increased deposit will serve to impede the default rate. I also reference the definition of Fair Market Value

AS 38.04.910. Definitions.

(3) "fair market value" means the price at which a willing seller and a willing buyer will trade;

Finally on what we are referencing as Amendment # 3- Page 3 line 9-12

We propose a simple solution that addresses two issues presented by the committee.

Line 10 on the H version Line 11 on the Amendment H.1 [**delete bracketed language**]

...for mineral values[, except for lands having a proven high mineral potential] based on geophysical survey....

Thank you for the opportunity to respond to this memo. I look forward to continuing discussion on HB 319 as I feel this is an important economic bill that will bring the Alaska dream to many of our residents who will become better stewards of the land they own than the state.

Attachments

HB 319 Revenue Assumptions

I. FINANCIAL ASSUMPTIONS

- 1) 2500 Ready Applicants
 - 2) 1000 Ready Willing Buyer
 - A) Three (3) Categories of Buyers:
 - 20 % 100% Cash Purchase/ 0 Financed
 - 20 % 25% Down/50% Financed
 - 60 % 10% Down/90 % Financed
 - 3) Average Price: \$ 1,000/acre
 - 4) Investments
 - A) 5% Annual Yield
 - 5) Financing
 - A) 6% Annual Percentage Rate (Prime +2% on loans)
 - B) 10% Down Payment
 - C) 60 Month Term
-

II. PARCEL ASSUMPTIONS

- 1) Desirable Remote Parcels:
 - a. River Frontage
 - b. Ocean Frontage
 - c. Lakeshore Frontage
 - d. Highway Frontage
 - e. View Properties

- 2) Land Characteristics
 - a. Fee Simple Ownership
 - b. 5.0 acres Parcels/Subdividable into (4) 1.25 acre lots
 - c. Some Ground Trans Access (snowmobile, 4-wheeler, boat, vehicle)
 - d. Contracts for Sale/Lease option to purchase
 - e. No State of Alaska Fire Protection
 - f. No State of Alaska "Trail construction or maintenance.

- 3) Purchasers bears ALL cost of acquiring Fee Simple Title
 - o Appraisals
 - o Surveys
 - o Title Insurance
 - o Recording Costs
 - o Legal Expenses (documentation)

- 4) Purchaser will pay for all site improvements:
 - a. Roads and trail access construction/maintenance
 - b. Structures/Buildings
 - c. Materials/Supplies
 - d. Real Estate Improvements (wells, septic, power, etc.)

- 5) The land purchase has Value Added Benefits:
 - a. Labor/Construction
 - b. Materials purchases
 - c. Fuel/energy consumption
 - d. Future Real estate transactions(Resale/subdivision)

III. NARRATIVE DESCRIPTION

The applicant pays for ALL related expenses of the purchase transaction. They then survey, appraise and purchase the parcel. Because HB 319 opens such large areas, there will be considerable public interest regarding what land is available. There will be some conflicting claims to parcels, specifically where Native Allotments have priority. These parcels can be purchased on a 5 year "lease option" until 2009 when all selections are completed by Native corporations.

Access concerns will be borne by the purchaser. DNR will not be expected to develop or maintain access routes. This new program will place considerable demands on DNR to provide information, particularly through the DNR public information offices in Anchorage, Fairbanks, and Juneau.

DNR will need to provide the public with accurate land status information for millions of acres of state land so the public knows what land is available, including the location of existing third-party interests, mining locations, Mental Health Trust Land, Native allotment locations, and trail and access information.

Specific tasks include:

- 1) DNR develops regulations to implement this disposal of land, establish qualifications, methods for resolving conflicting claims, etc.
- 2) DNR identifies land available for entry under this program-from state and federal status plats based upon state ownership, land classifications, municipal entitlements, existing private lands, Native allotments, etc. They would need to make available existing maps of several million acres available for selection.
 - a. Produce additional maps from existing supply.
 - b. Print and distribute maps
- 3) Purchaser stakes parcel, orders and pays for: survey, appraisal, recordation and documentation.
- 4) DNR approves a list of qualified appraisors and surveyors acceptable to the State of Alaska. That list will be provided to the purchasers to choose these services. Since these individuals are already approved by DNR, a review of their work will not be necessary. Appraisals and surveys will not be accepted by the State of Alaska from any individual who has not be qualified and accepted by the State of Alaska.

FY04 and following years- staking period opens-assume staking and filing period starts summer 2004 and continues indefinitely. (1) Staff positions for Public Information Office and (1) staff position to keep land status maps current; Cartographer (Anchorage), (2) staff positions to review and process applications (Fairbanks), (1) staff position for Public Information Office in Juneau, (1) staff position to issue deeds and conduct related title searches.

- 1) DNR Public Information Office staff to field program inquires
- 2) DNR accepts applications, certifies they qualify.
- 3) DNR reviews and approves applications and land available for selection.
- 4) DNR issues title documents

The purchaser performs the remaining functions and pays for the cost of implementation and acquisition of fee simple title.

2004
COMPARABLE SALES
(Average price/acre: Remote Parcels)

I. VERY REMOTE PARCELS (fly in only)			
a. Twin Lakes (Brooks Range)			
40 acres @ \$40,000	=		\$ 1,000/acre
b. Novy River "swampy" (Nuwitna)			
80 acres @ \$75,000	=		\$ 937/acre
c. Sand Lake "swampy" (Tok)			
50 acres @ 65,000	=		\$ 1,300/acre
II. REMOTE PARCELS (limited access)			
a. Clear, Ak			
70 acres @ \$45,000	=		\$ 642/acre
b. East Twin/West Twin Lakes (Woodriver)			
5 acres @ \$20,000	=		\$ 4,000/acre
c. Kendamina (Manley Flats)			
3 acres @ \$12,000	=		\$ 3,000/acre
III. DESIRABLE PARCELS (Waterfront lots, No road access)			
a. Delta Clearwater			
7 acres @ \$20,000	=		\$2,857/acre
5 acres @ \$25,000	=		\$5,000/acre
b. Good Pasteur River			
4.19 acres @ \$30,000	=		\$7,159/acre
c. Chena Angler Subdivision			
5 acres @ \$50,000	=		\$10,000/acre
IV. HIGHLY DESIRABLE PARCELS (Lakefront, Road access)			
a. Paxson Lake			
5 acres @ \$80,000	=		\$16,000/acre
5 acres @ \$50,000 (* 2 nd Tier lots)	=		\$10,000/acre
b. Fielding Lake			
5 acres @ \$35,000	=		\$ 7,000/acre

V. NATIVE ALLOTMENTS (VERY REMOTE)

a. Salmon Trout (Porcupine River) "Steep embankments" very remote 160 acres @ \$75,000	=	\$ 468/acre
b. (Nuwitna area) 80 acres @ \$75,000	=	\$ 937/acre
c. George Lake (Tok area) 40 acres @ \$60,000 (BIA appraised)	=	\$1,500/acre
10 acres @ \$30,000 (Waterfront lots)	=	\$3,000/acre

- The average price per acre on Native Allotments is \$500/acre. These parcels are large in size and very rural. They also have very limited access. These parcels take considerable time to sell and are equivalent to parcels offered in the past by DNR. These parcel are not as desirable to the average buyer, thus a per acre price of \$500 – 1000/ acre is reflected
- The average price per acre of \$1,000 for non-native allotment parcels is low and considered to be a conservative estimate of the value per acre for the types of parcels that would be selected. Most parcels selected will appraise and sell in excess of \$2,500/acre.

Data was provided by AK-Land (Robert A. Fox)

**REVENUE PROJECTION
FY 05**

I.	SALES REVENUE (1/1/05 – 1/31/05)	
	A. CASH SALES	
	[200 Parcels x 5.0 acres/ parcel x \$1,000/acre] =	\$1,000,000
	B. 50% CASH SALES	
	[200 Parcels x 5.0 acres/parcel x \$1,000/acre] =	\$ 250,000
	C) 10% DOWN SALES	
	[600 Parcels x 5.0 acres/parcel x \$1,000/acre] =	\$ 300,000

	TOTAL FY05 SALES REVENUE	\$1,550,000
II.	INTEREST INCOME (5% return)	
	A. CASH SALES	
	[\$1,550,000; 12mo. @ 5% compound daily)	
	Interest Income FY05 =	\$ 79,300
III.	FINANCE REVENUES (1/1/05 – 12/31/05)	
	A. CASH SALES	
		\$ 0
	B. 25% CASH SALES/75% FINANCED	
	[200 Parcels; \$3,750 @ 6%, 60 mo.]	
	Finance Income FY05 =	\$ 41,380
	C. 10% DOWN SALES/90% FINANCED	
	[600 Parcels; \$4,500 @ 6%, 60mo	
	Finance Income FY05 =	\$ 149,016

	TOTAL FY05 FINANCE INCOME	\$ 190,396
	TOTAL PROJECTED REVENUE FY05 =	\$1,819,696

HB 319 RECREATIONAL CABIN SITES

FY05 REVENUE PROJECTIONS BACKUP

A.	CASH SALES	(1/1/05)	DEPOSIT	=	\$1,000,000
B.	25% CASH SALES	(1/1/05)	DEPOSIT	=	\$ 250,000
C.	10% DOWN SALES	(1/1/05)	DEPOSIT	=	\$ 300,000
	TOTAL DEPOSITS to PRINCIPAL			=	\$1,550,000
D.	INTEREST INCOME OF INVESTMENT (5%) 12 mo.			=	\$ 79,300
E.	FINANCE INCOME ON LOANS (6%)				
	Accrued Interest	(206.90/yr x 200,	\$(3,750 loans)	=	\$ 41,380
	Accrued Interest	(206.16/yr x 600,	\$4,500 loans)	=	\$ 149,016
	TOTAL FINANCE INCOME			=	\$ 190,396

TOTAL REVENUE PROJECTED FOR FY05 = \$1,819,696

Alaskans for Responsible Mining

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5 Reasons to Oppose Corporate Guarantees

1. Corporate guarantees provide no financial protection to the State of Alaska in the event of a bankruptcy.

The purpose of a reclamation bond is to protect the State against the cost of mine cleanup should a company declare bankruptcy or refuse to complete reclamation according to its operating permit. As a form of financial assurance, corporate guarantees provide no guarantee at all. A corporate guarantee is simply a written promise, or "IOU," by the corporation that it will fulfil its reclamation obligation. There are no hard assets, cash, or cash-equivalents, behind it. Should bankruptcy occur, corporate guarantees leave the regulatory agency with no recourse but to pursue the corporation in bankruptcy court.

2. Corporate guarantees are prohibited by most other western states and by federal land management agencies.

The U.S. Bureau of Land Management and the U.S. Forest Service prohibit corporate guarantees for mine cleanup. Many western states (Idaho, Montana, California, Oregon, South Dakota, and Washington) also prohibit the use of corporate guarantees for mine reclamation.

3. The number of bankrupt mines in western states has increased significantly in recent years, putting many state and/or federal agencies in a position of significant liability.

State and/or federal agencies are presently potentially responsible for at least some portion of the cleanup costs of 13 mines in Nevada, five in Montana, and additional mines in South Dakota, Idaho, Colorado and New Mexico. For example:

- Pegasus Gold filed for bankruptcy in 1998, leaving the State of Montana with combined cleanup costs of over \$40 million at the Zortman/Landusky and Beal Mountain mines. "If DEQ had accepted corporate guarantees at the seven sites now being reclaimed, and had to stand in line with other creditors in bankruptcy court, or chase vanished companies, we would most likely now be dealing with an additional \$60 million shortfall, with the sites lying unreclaimed." Comments from Warren McCullough, Chief of the Environmental Management Bureau at the Montana Department of Environmental Quality.
- At the Summitville Mine, located on state lands in Colorado, the mining company walked away, leaving taxpayers with over \$120-150 million in reclamation costs.
- Similarly, South Dakota was forced to take the extraordinary step of requesting court intervention to keep the operator of the Gilt Edge Gold Mine from abandoning its water quality treatment plant. In 2000, the State of South Dakota was spending roughly \$100,000 each month on water treatment at the site. The state and EPA estimate the total reclamation costs to be between \$22 and \$27 million.

In Alaska, one major mine is currently in bankruptcy (Illinois Creek). Another mine that was part of the Alaska Bond Pool Program is also bankrupt, with clean-up costs likely to exceed \$250,000 (Nixon Fork).

4. Corporate guarantees are an unnecessary risk to the State because there are many other forms of financial assurance available.

There are many types of financial assurance available to the mining industry. Reclamation bonds in the form of cash or cash-equivalent are the preferred form of financial assurance since they are the most secure and are readily available to the State in the event they are necessary. These include irrevocable letters of credit (bank guarantees), surety bonds, certificates of deposit, and trust funds.

5. The State of Alaska needs the protection provided by adequate reclamation bonds because mining is an inherently volatile industry.

Circumstances such as mergers, hostile takeovers or dramatic fluctuations in metal prices often occur very rapidly, leaving what might appear to be a healthy corporation in difficult financial circumstances. In some cases, states have been left in an unexpected position of liability when subsidiaries have filed for bankruptcy after shifting assets to other subsidiaries within the parent corporation. For example:

- W.R. Grace filed for bankruptcy in April 2001 to protect its parent company from the liability of asbestos-related tort claims associated with the W.R. Grace Mine and processing facilities. According to Montana's Attorney General, Mike McGrath, W.R. Grace employed a "dizzying array of complex maneuvers" that moved a bulk of Grace's holdings and finances into subsidiaries and other companies. Because the reclamation bond was inadequate for mine cleanup, the W.R. Grace Mine was designated a Superfund site in 2001. The State will be responsible for 10% of Superfund costs, which have already topped \$60 million.
- In August 2002, the U.S. Department of Justice filed suit against ASARCO to prevent the company from selling its two remaining revenue-generating assets to another subsidiary within its parent company, Grupo Mexico. According to the U.S. Department of Justice, "If allowed to proceed, this transfer will strip Asarco of its most significant asset and will create a situation wherein the company will not only be unable to meet its environmental obligations in the future, but will endanger the future viability of the company." According to an August 2002 article in the Spokesman Review, ASARCO has over \$1 billion in liabilities at its mining and smelting operations in the U.S. ASARCO, one of the largest mining corporations in the United States, was purchased by Mexican corporation Grupo Mexico in 1998.

Even if regulatory agencies have the capacity to monitor the financial health of every corporation that operates in the state, it is often too late to put in place other financial instruments once a corporation's financial difficulties become apparent.

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FACT SHEET: The Role of Metal Mining in the Alaska Economy

Excerpted from a paper written by Thomas Michael Power, Ph.D.
Professor of Economics, University of Montana, Tom.Power@mso.umt.edu

In 2002 Dr. Thomas Michael Power, acting as an independent economic consultant, prepared a report investigating the factual basis of metal mining's assumed importance in Alaska's economic future. Power concluded that mining plays a relatively small role in the Alaska economy despite its sometimes mythological status.

1. Metal mining is directly responsible for only about one-half of one percent of Alaskan jobs and personal income: about 2,000 of Alaska's 400,000 jobs and \$87 million of Alaska's \$18.6 billion of personal income in the year 2000. Even after applying any reasonable "multiplier" to these numbers, metal mining would continue to provide only a small sliver of total Alaskan jobs and income.
2. In the "mining dependent" cities of Fairbanks and Juneau, metal mining is directly responsible for about one and two percent of total jobs, respectively.
3. This very modest role of metal mining is often obscured by exaggerated estimates of metal mining's impact built around double and triple counting or counting value that is not created in Alaska. Such exaggerated estimates of impacts ignore basic economic accounting rules established almost a century ago.
4. Because of its capital and land intensive nature and relatively modest use of labor, the payroll associated with Alaska metal mining represents only about 8 percent of the \$1.1 billion value of metal mine production.
5. During the 1990s, while the real value of metal production in Alaska rose 83 percent, from about \$600 million to \$1.1 billion, metal mine payroll rose only 5 percent.
6. Although metal mining, because of its capital intensity, contributes significantly to local governments' property tax bases, its contribution to total local government revenues, including all revenue sources, is much smaller. The Fort Knox Mine contributes about one percent of the total revenues received by local governments in the Fairbanks-North Star Borough. The Greens Creek Mine contributes about one-half of one percent of the revenues received by local governments in the City and Borough of Juneau.
7. Mine license taxes and production royalties on state owned minerals yield only a few million dollars each to total state revenues that total almost \$6 billion even without counting the revenue flows into the Permanent Fund. Together these two sources of revenue from metal mining contribute less than one-tenth of one percent of total Alaskan government revenues.
8. Despite the high wages paid in metal mining, that industry is not usually associated with prosperous communities across the nation because (1.) metal commodity prices are unstable, causing instability in employment and payroll; (2.) the life of a contemporary metal mine tends to be relatively short, 5 to 15 years; (3.) the labor needs of metal mining operations are constantly falling as technological change displaces workers; only constant expansion of mine production can offset this; and (4.) environmental damage associated with metal mining discourages people and businesses from locating near mining operations.
9. Inadequate reclamation laws and reclamation bonding requirements can leave state governments with large reclamation financial obligations and near permanent damage to the natural environment. Both have negative long-term economic impacts.
10. The popular economic base approach to thinking about the Alaskan economy that focuses on the assumed special role of oil production and transportation, mining, other natural resource industries, manufacturing, and the federal government as key economic drivers is incomplete and inadequate. It cannot explain the ways in which the Alaskan economy has been changing. For instance, during the 1990s while employment in these key sectors declined 25 percent, employment in other sectors expanded 25 percent. While real income from these sectors declined 7 percent, income from other sectors expanded by 31 percent. The Alaskan economy is more diverse and resilient than the popular economic base view suggests.

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ALASKA MINING REVENUE FACT SHEET

Mines operating in Alaska are required to pay a **Mining License Tax** to the State; they must also pay, as must all corporations that derive income from sources within Alaska, a **Corporate Net Income Tax**. Additionally, if the mine is located on State land, a **3% net income royalty** is assessed by the State. Like revenue generated by oil and gas royalties, 50% of mineral royalties collected are allocated to the Alaska Permanent Dividend Fund.

The **Mining License Tax** is a graduated tax levied on mining net income (not gross) and royalties generated in connection with mining properties and activities in Alaska (AS 43.65). The tax rate for net income over \$100,000 is \$4,000 plus 7% over \$100,000. All revenue, except for payments after a tax assessment, is deposited in the General Fund. New mining operations are exempt from this tax for three and a half years after production begins. Taxpayers may also take tax credits if they make contributions for educational purposes to accredited Alaskan colleges and universities, up to a maximum credit of \$150,000 per tax year. Additionally, there is a Minerals Exploration Incentive credit of up to \$20 million applied against 50% of mining license liabilities over 15 years, and a Special Industrial Incentive Investment credit for investment in mining projects in Alaska.

The Mining License Tax contributes **less than one percent in any given year to the General Fund**. In FY 2002, revenues from the mining license tax, after credit and incentive deductions, amounted to \$446,430, for a zero percent contribution to the General Fund. FY 2001 was a better year for the mineral industry, which realized over \$ 3 million in tax credits on a \$5.3 million tax bill, for a total tax paid to the General Fund of \$1,729,156. This added up to just 0.1% of the contributions to the General Fund.

The **Corporate Net Income Tax** is based on federal taxable income, with Alaska adjustments (AS 43.20). Multistate corporations, such as large mining companies, apportion income to Alaska under a "water's edge" apportionment method, whereas oil and gas corporations apportion income through a worldwide method. Like the Mining License Tax, the Corporate Income Tax contains exploration incentives. Industry contributions to the Alaska General Fund are unknown, since law prohibits disclosure of any corporation's specific tax information; however, it can be deduced from corporate balance sheets that there is little, if any, contribution. For example, in FY 2002, Fairbanks Gold Mining, Inc., operator of the Fort Knox mine, declared a taxable income of negative \$17,470,149. Thus, no Corporate Net Income Tax was paid.

Metals removed from State land are assessed a **3% net income royalty**. Mining companies are allowed to deduct the costs of developing and operating the mine, overhead, investments in upgrades, as well as a percentage depletion (a non-cost accounting for the depreciation in mine value as ore is removed). As a result of these extensive deductions, many mines pay no royalties to the State.

The State also assesses a flat 3% royalty on royalty interest holders. These are underlying claim holders that lease their mining claims to a mine operator, and, as a condition of the contract, have established separate royalty payments and schedules. In these arrangements, which are very common, royalties are assessed on metal value not net income, which yields bigger payments. For example, Fairbanks Gold Mining, Inc., a wholly owned subsidiary of Kinross Gold Corporation, pays another Kinross company, Kinam Gold, royalties on claims Kinam holds for the Fort Knox mine. In FY 2002, FGMI paid \$205,685 in royalties to Kinam, but just \$61,007 to the State. Aside from these small flat royalty interest payments, **FGMI has paid no royalties for Fort Knox gold to the State of Alaska – despite having produced and sold over 2.6 million ounces of gold – worth over 8.5 billion dollars at today's gold prices.**

Thus, in practice, because the Corporate Net Income Tax, the Mining License Tax and the royalty calculation are based upon a net income calculation with high write-offs, little money flows from the mining industry to the State of Alaska, though the companies still bring in healthy profits. And to date, there have been no contributions from mineral royalties to the Alaska Permanent Dividend Fund.

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RECLAMATION BONDING Fact Sheet

Mine bankruptcies are rarely predicted and frequently have significant financial, social and environmental impacts. State law presently limits the amount of reclamation bond that can be required of a mine operator by state regulatory agencies. This raises the issue of who should bear the burden and risk of mine failure – the public or the company seeking to make a profit? Present Alaska law does not protect the State from incurring mine reclamation costs, and therefore does not ensure that mines will be adequately reclaimed. To ensure adequate reclamation and financial protection, Alaska law should be revised according to the following provisions:

1. Reclamation bonds and financial assurances must cover the full cost of reclamation.

Alaska is the only state, other than Idaho, which places a "per acre" limit on the reclamation bond. Rather than requiring the reclamation bond to cover the full cost of reclamation, Alaska's law limits the reclamation bond to \$750 per acre of disturbed land.¹ The company may *voluntarily* provide a bond for more than the amount required, and most large mines do. However, not all of them do. And, in cases where the company volunteers a higher bond amount, the \$750 per acre limit essentially compels the State to accept the original cost estimate of the company regardless of the full cost of reclamation. The \$750 per acre is simply not adequate to complete reclamation, particularly if water treatment is needed. For comparison, the average bond amount for major mines in western states is approximately \$4,400 per acre, however the range of cost varies from less than \$1,000 per acre to greater than \$50,000 per acre.² In order to protect the State from liability and ensure adequate reclamation, Alaska law should be revised to require full cost bonding.

2. Reclamation costs should be calculated by the regulatory agency, and those costs should be based on the cost to the agency, or a third party contracted by the agency, for performing the necessary reclamation activities.

In the event of a bankruptcy or other financial difficulty, it will probably be necessary for the State to assume reclamation responsibilities. These costs are significantly higher (20%-100%) than if the company were to complete reclamation. Alaska statutes should be revised to require that the Division of Mining and Water Management determine and set the bond amount. The estimation should be based on the cost to the agency, or a third party contracted by the agency, to perform the necessary reclamation and post-closure activities. The amount should include the following indirect costs: (1) agency investigation and oversight of reclamation and closure activities; (2) contractor mobilization/ demobilization costs; (3) cost of final reclamation and closure engineering, procurement and construction management activities; (4) contractor insurance, performance bonding and profit; (5) contingency; and, (6) cost inflation.

¹ 11 AAC 97.420

² Hardrock Reclamation Bonding Practices in the Western United States, James R. Kuipers, Feb 2000, ES, p.3.

3. Mine inspections and bond reviews must occur on a regular basis to ensure that bond amounts accurately reflect on-site conditions.

Alaska law allows regulatory agencies to conduct mine inspections, but it is not mandatory. Inspections for large mines should occur on a quarterly basis and bond amounts should be reviewed annually to ensure that they accurately reflect on-site conditions. Mandatory timelines should be incorporated into state law to ensure that bond amounts are increased in a timely manner to reflect changes that develop on site. Bonds must be increased at the first indication that adverse environmental conditions are developing (e.g., acid mine drainage, metals leaching, reduction in stream flows, etc.).

4. Reclamation bonds and financial assurance instruments should be independently guaranteed and liquid. The bond must provide for interim actions by the State.

In the event of a bankruptcy or other financial difficulty, funds must be immediately available to the State to ensure that it may act to protect human health and the environment. The State should not have to wage legal battles to protect the reclamation bond from mine creditors, to obtain the bond from surety companies, or to spend the bond as necessary. Present Alaska law also allows the State to accept a "corporate guarantee" as a financial assurance.³ Recovering money from a company in bankruptcy poses obvious risks, and the option of utilizing corporate guarantees as instruments of financial assurance in case of bankruptcy should be eliminated.

5. The public must have the right to comment on the adequacy of reclamation plans, bond amounts, and bond releases.

No specific provisions for public participation are provided in the Alaska Reclamation Act. Since the public runs the risk of bearing the environmental and financial costs of inadequate or prematurely released bonds, they should have the ability to comment on all aspects of reclamation bonding. State law should provide for public participation, including the critical right to request an investigation of potential violations, the right to request an adjustment of the performance bond, and the right to challenge a bond release.

6. Reclamation bonds should not be released until the regulatory agency has inspected the site to ensure compliance with all applicable laws.

Alaska's Reclamation Act allows for bond release once the miner has examined the requirements of the approved reclamation plan, has investigated the nature and extent of reclamation and certifies that all applicable reclamation responsibilities have been completed. Inspections by the agency are not required.⁴ ADNR should be required to certify that reclamation has been successfully completed, and the public should be allowed to comment on this certification.

7. The State must have the authority to modify or extend the bond agreement to fulfill post-reclamation activities.

No provisions are included in Alaska law that allows the State to modify or extend the surety agreement to fulfill closure/post-closure requirements. This is particularly a problem for mines which develop acid mine drainage that may require long-term water treatment. In Alaska, the Red Dog Mine will require water treatment in perpetuity, and the Greens Creek Mine requires water treatment during operation, and for at least a period of years after closure. Water treatment, especially if it is required in perpetuity, poses a significant risk to the State since the company will probably not be present to help fix any unanticipated problems, or bear any

³ 11 AAC 97.400

⁴ 11 AAC 97.435

unanticipated costs. State agencies must have the authority to extend the bond agreement to address problems that persist.

8. The Alaska Reclamation Act lacks substance in terms of comprehensive and specific reclamation standards and other requirements.

The Alaska Reclamation Regulations lack substance in terms of comprehensive and specific reclamation standards. The regulations contain general provisions addressing recontouring, stability, and hydrology and geochemical-acid mine drainage. However, there are limited provisions pertaining to topsoil, revegetation and public safety. Furthermore, the regulations do not include direct provisions for water quality and do not address wildlife habitat and aesthetics. Water quality is particularly a concern. If water treatment is required as part of operation or reclamation, reclamation costs can increase significantly, and typically double the required bond amount. Reclamation bonds cannot provide adequate protection for Alaska's natural resources if the reclamation standards are inadequate.

9. Small hardrock mines must be required to reclaim, and to post a reclamation bond that covers the full cost of reclamation.

Alaska law currently exempts mining operations less than 5 acres in size from reclamation and bonding requirements, regardless of their impact.⁵ In many cases, small mines, particularly those located adjacent to rivers and streams, may cause significant environmental harm. Alaska law should provide a small mine reclamation scheme that provides for the reclamation and adequate bonding of these mines.

10. Alaska law should specify that the State must certify that bonds which are held by another entity must be sufficient to meet the amount and form of financial requirements of Alaska reclamation regulations.

The Department of Natural Resources can also enter into a "cooperative management agreement" with another state agency, a municipal government, or the federal government.⁶ However, federal bonding requirements in some cases may not provide for full-cost bonding. In entering into an agreement where the federal government or a municipal government actually holds the bond, the State must make sure that the amount of the bond and the form of financial surety meet its regulatory criteria, and protect Alaska taxpayers from potential financial, social and environmental liability.

11. Exploration activities, regardless of size, should be required to submit an exploration plan of operations, agree to reclaim any surface disturbance created by exploration activities, and submit a reclamation bond to cover the full cost of reclamation.

Exploration activities may cause significant environmental impacts due to road construction, drilling and other associated activities. State law should include a provision to ensure that these impacts are reclaimed if exploration does not lead to full-scale mining.

⁵ AS 27.19.050

⁶ AS 27.19.060; 11 AAC 97.700

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND AND WATER

HB 319

APR 12 2004
FRANK H. MURKOWSKI, GOVERNOR

550 W. 7TH AVE., SUITE 640
ANCHORAGE, ALASKA 99501-3576
FAX: (907) 269-8916

April 8, 2004

The Honorable Nancy Dahlstrom
Room 128
State Capitol
Juneau AK 99801-1182

Dear Representative Dahlstrom,

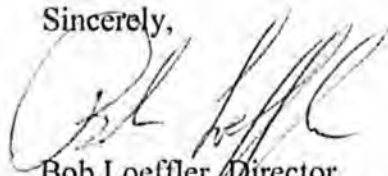
I am very pleased to provide you with the enclosed brochure for the Spring 2004 Alaska State Land Offering – Auction #433. This spring the Division of Mining, Land and Water is offering Alaskans 66 parcels for sale through a public sealed-bid auction. Of these, 64 parcels are being offered in three newly surveyed subdivisions. Particularly noteworthy is the fact that this auction also marks the first time new subdivision parcels are being offered with constructed road access. These offerings include a total of 56 new parcels in the Mystery Alaska and North Diamond Lake Subdivisions, both located in the relatively high interest area of Big Lake.

This auction will increase the total number of parcels offered this fiscal year to 175 pre-surveyed parcels. We will also offer 266 remote recreation cabin sites in June, 2004. The remote recreation cabin site program allows Alaskans to choose and stake their own land in specific areas. In addition, there are currently 2,831 parcels available for sale over-the-counter that Alaskans can purchase directly from DNR offices or over the internet. Parcels not sold in auction #433 will be added to the over-the counter inventory and will be available for purchase over-the-counter this June.

Last fiscal year the division sold 613 pre-surveyed parcels totaling over 4,650 acres of land for a value of: \$6,452,471. In addition, 105 parcels, encompassing approximately 1,700 acres, were sold through the Remote Recreational Cabin program for a value of: \$1,336,015. The combined value of land sales for last year is: \$7,788,486. The division is selling more land for less cost than any time in its history. The FY 03 total is the largest amount of land sold and most revenue earned since the 1980's.

The division appreciates your continued support for Alaska's land sale programs. If you would like any additional information, please do not hesitate to contact me.

Sincerely,



Bob Loeffler, Director
Division of Mining, Land & Water

"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"