

HB

486

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 486
 (H) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title: Mining Reclamation Bonding RDU: Resource Development
 Component: Claims, Permits and Leases
 Sponsor: Rules
 Requester: Governor Component No.: 2460

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill makes various changes to AS 27.19, and establishes a Mining Reclamation Trust Fund under AS 37.14.
 The bill would require no additional staff at the Department of Natural Resources. The Mining Reclamation Trust Fund would allow the state to take in funds from a particular mine for use for reclamation at that mine. There would be no net change to funds available to the state for general government purposes.
 The last financial change established by the bill is that income and other earnings on the reclamation bond pool, used for placer mines, would be returned to the pool (AS 27.19.040(b)). This amount is expected to be approximately \$50,000 in FY 04. The new language changes the location for holding for the funds but does not change the amount available to the state.

Prepared by: Bob Loeffler, Director Phone 269-8600
 Division: Mining, Land & Water Date/Time 1/21/04
 Approved by: Thomas Irwin, Commissioner Date 1/21/04
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 486
 (H) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Reclamation bonding for certain mines RDU Revenue Programs & Services
 Component Treasury Division
 Sponsor Rules Committee
 Requester Request of the Governor Component No. 121

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	6.0	12.0	18.0	24.0	30.0	36.0
Travel						
Contractual	15.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	21.0	12.0	18.0	24.0	30.0	36.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	21.0	12.0	18.0	24.0	30.0	36.0
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	21.0	12.0	18.0	24.0	30.0	36.0

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is predicated upon a trust fund build-up of \$10 million per year plus fund earnings. The cost of managing a fixed income trust fund internally is about 6 basis points. Additionally, this fund would require individual project fund tracking, something that is slightly different from anything now done at Treasury. A contractual cost of \$15.0 is included to originate that tracking with GeFONSI.

Prepared by: Tomas Boutin, Deputy Commissioner
 Division: Treasury
 Approved by: Bill Corbus, Commissioner
 Agency: Revenue

Phone 465-3669
 Date/Time 1/20/04 1:41 PM
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HB486



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 2004

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to mine reclamation bonding and financial assurance.

This bill would make three changes to existing law. First, it would remove "lode mines," sometimes referred to as "hard-rock mines," from the current bonding "cap" of \$750 per acre for mine reclamation responsibilities; the cap would remain in effect for placer mines. Second, it would replace the term "performance bond" with the term "financial assurance," and would list various ways to provide that assurance, in order to give mining companies and the state the flexibility to employ a variety of financial assurance vehicles. Third, it would create a mine reclamation trust fund, which would allow the build-up of an adequate reclamation fund through payments made over time and through the earnings on that fund.

These three changes all reflect the fact that satisfactory reclamation of a hard-rock mine is a site-specific issue. A generic dollar-per-acre bond "cap" simply does not work for reclamation responsibilities for hard-rock mines. Each mine is unique, and the optimal vehicle to use to ensure final reclamation depends on many factors including, by way of example: the projected mine life; the need for long-term site management measures (such as to address potential acid mine drainage); and the availability and cost of different bonding tools in the current financial market. Given these and other factors, the state and the mining industry need flexibility in selecting and constructing financial assurances for mine reclamation.

The third element of the bill, the mine reclamation trust fund, is an attempt to accommodate some fiscal realities faced by the industry. It provides the opportunity for the state to set up site-specific funding agreements to accommodate long-term or in-perpetuity reclamation tasks. Examples include the possible need for in-perpetuity water treatment at the Red Dog

The Honorable Pete Kott
February 13, 2004
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Mine, long-term monitoring at the Illinois Creek Mine, and in-perpetuity maintenance of the dam for the freshwater recreation lake that Fort Knox Mine is leaving to Alaskans at the request of the Department of Natural Resources. The trust fund concept provides for a method of accommodating long-term or in-perpetuity reclamation needs of this type.

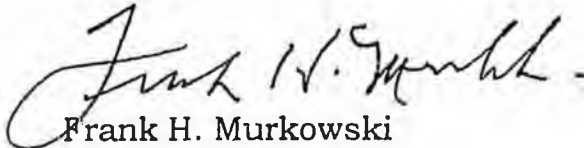
Making deposits into a state-controlled trust fund will have significant benefits for industry and the state. In addition to providing potential benefits under the federal tax code for companies, the state would have access to a fund for mine reclamation work that will retain earnings and increase over time.

The bill would provide that the Department of Revenue would manage investment of the fund, as it does already for a number of other similar state funds. But the Department of Natural Resources would be the agency authorized to make expenditures from the fund for mine reclamation and post-closure site management.

The state's resource agencies, under the leadership of the Department of Natural Resources, have crafted this bill with an understanding of the needs of the industry and the needs of Alaskans who rely on reclamation of the land. This bill is broadly supported by the mining industry.

I urge your prompt and favorable action on this measure

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

Alaskans for Responsible Mining

P.O. Box 100660, Anchorage, AK 99501 ♦ (907) 258-6148 (907) 258-6177, fax ♦ www.reformakmines.org

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 clean up 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 clean up. 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.

Alaskans for Responsible Mining

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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.

Alaskans for Responsible Mining

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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

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

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February 24, 2004

The Honorable Nancy Dahlstrom, Co-Chair
The Honorable Beverly Masek, Co-Chair
House Resources Committee
Alaska State Legislature
Juneau, AK 99802

RE: HB 486, Mining Reclamation Bonding

Dear Representatives Dahlstrom and Masek:

I am writing to request a hearing next week for HB 486, a bill that relates to reclaiming bonding and financial assurance. This bill amends mining law at AS 27.19.

The bill makes three changes to existing law. First, it removes "lode mines," sometimes referred to as "hard-rock mines," from the current bonding "cap" of \$750 per acre for mine reclamation responsibilities; the cap remains in effect for placer mines. Second, it replaces the term "performance bond" with the term "financial assurance," and lists various ways to provide that assurance. Replacing this term provides mining companies and the state the flexibility to employ a variety of financial assurance vehicles. Last, it creates a mine reclamation trust fund, which allows the build-up of an adequate reclamation fund through payments made over time and through the earnings on that fund. I have enclosed a copy of the Governor's Transmittal letter for your information.

I appreciate your consideration in scheduling this bill. Please contact Janet Burleson Baxter at (907)465-4730 if have any questions. You may also contact Bob Loeffler, Director of the Division of Mining, Land and Water at (907)269-8600.

Sincerely,



Thomas E. Irwin
Commissioner

Enclosure

cc: Bob Loeffler, Director, ML&W
Janet Burleson-Baxter, Special Assistant, DNR

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