

SB

339

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/16/04

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3-4-03

Resources Committee considered SENATE BILL NO. 339

SB 339 MINING RECLAMATION ASSURANCES/FUND

"An Act relating to reclamation bonding and financial assurance for certain mines; relating to financial assurance limits for lode mines; establishing the mine reclamation trust fund; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Rev.	1/29/04	✓			1
DIOR	1/21/04			✓	2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
<i>Joseph DeBari</i>		✓			
<i>Paul [unclear]</i>		✓			
<i>[unclear]</i>				✓	
<i>[unclear]</i>				✓	
<i>Ben [unclear]</i>		✓			
CHAIR: <i>Thomas H. Wagner</i>		✓			

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 339
(S) 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 Phone 465-3669
Division Treasury Date/Time 1/20/04 1:41 PM
Approved by: Bill Corbus, Commissioner Date 1/20/2004
Agency Revenue

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 339
(S) 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

SB 339



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Therriault:

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 Gene Therriault

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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.

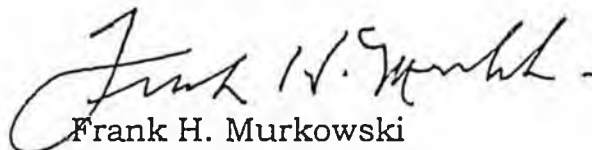
Making deposits into a state-controlled trust fund will have significant benefits for industry and the state. In addition to providing potential benefits under the federal tax code for companies, the state would have access to a fund for mine reclamation work that will retain earnings and increase over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

Briefing Paper: Mining Reclamation Bonding
SB 339 & HB 486
Department of Natural Resources
March 1, 2004

Background

- *Mine Reclamation Is Required By Law.* Reclaiming mined ground — returning it to a productive state — is required by law.
- *A Bond Protects Alaskans in Case a Company Fails to Reclaim.* The State requires a bond before mining begins to provide assurance that if the miner does not complete the reclamation obligation, the state can seize the bond and reclaim the land.
- *Alaska's Law was Designed for Placer Mines, not Large Lode Mines.* Alaska's reclamation statute took effect in 1991. At that time, Alaska's industry was primarily placer mines. Today, we have an active placer mining industry plus a new large mine industry: Red Dog, Greens Creek, Fort Knox, True North, and Pogo. Alaska hopes to host many new large mines in the future: Donlin, Pebble Copper and others.
- *Alaska's Law Limits a Reclamation Bond to \$750/acre; Large Mines Cannot Be Reclaimed For That Amount.* Alaska's reclamation law, intended for placer mines, puts a reclamation bond cap of \$750 per acre. In other words, DNR may not require the mining company to put up more than \$750 per acre as a reclamation bond. The law has worked well for the placer industry, but most large mines cannot be reclaimed for \$750 per acre. Most large mines require large reclamation expenditures. Greens Creek has approximately a \$26 million reclamation bond; Pogo is expected to require \$23 million. Red Dog's bond will eventually be significantly greater.
- *Alaska's Large Mines Have Voluntarily Given DNR a Large Bond.* To resolve this issue — that the state cannot require a bond big enough to reclaim a mine's disturbance — Alaska's lode mines have voluntarily provided a larger bond.

Three Changes. The bill makes three changes to Alaska's Reclamation Bond Statute to respond to the changes in Alaska's mining industry.

1. *Requires Full Bond For Large Mines.* The bill lifts the reclamation bond \$750/acre cap for lode mines (i.e., large mines). The law will continue to work as it has for most placer mines and for exploration projects, but for large mines DNR will require a company to bond for the "reasonable and probable cost of reclamation" before mining may begin.
 2. *Provides More Methods for Mines to Satisfy DNR's Bond Requirements.* The bill replaces the term "performance bond" with the term "financial assurance" and lists various ways that a mining company may provide that assurance: surety bond, letter of credit, certificate of deposit, corporate guarantee, or payments to the Mining Reclamation Trust Fund described below. Every mine is unique, and DNR expects that each mine will need to use a different suite of instruments to satisfy the requirement to provide financial assurance (bond) that the work will be done.
- *Mine Reclamation Trust Fund.* The Mine Reclamation Trust Fund provides a voluntary method by which a mining company may give money to the State, for the State to hold until the money is needed for reclamation. Interest and earnings on the money held for the

mining company is returned to the fund for eventual use for that mine's reclamation. The Trust Fund does not change the requirement to bond; it only provides one more method for companies to meet that requirement.

The Trust Fund has a number of advantages for the state:

- *It provides a method to accommodate long-term or perpetual reclamation requirements.* The Red Dog Mine is likely to need water quality treatment forever. Other mines have a similar need for perpetual or long-term reclamation funding. The only way to hold a fund that provides money for many decades (or forever) is to use a mini endowment (i.e., a mini permanent fund). Interest on the Trust needs to come back to the Trust to fund each year's reclamation work for a long time or for forever. The Mine Reclamation Trust Fund solves these problems.
- *Cash Is Best.* The most secure bond for the State is cash, held by the state. That provides the greatest assurance that money will be available if a company fails to complete its obligation.

The Trust Fund has a number of advantages for mining companies.

- *Interest Accumulates Tax Free.* If a company puts aside funds for to be spent for reclamation a few decades later, the interest on the money is taxable. The state is not a taxable entity. Interest and earnings on a fund held by the state are not taxable.
- *Other Tax Advantages.* There are potentially other tax advantages for the mining company if the state holds the company's reclamation fund.

Questions & Answers

How would the Mine Reclamation Trust Fund work? An example. Image a large gold mine with a 30-year mine life. The company makes a reclamation agreement with the state. They use a variety of financial instruments to meet the multi million dollar bond requirement: a part of their bond requirement may be met by a letter of credit, part by a surety company, and part by a corporate guarantee. The mining company also decides to put money away each year in a Mine Reclamation Trust Fund (and they correspondingly reduce the amount of another instrument, for example the corporate guarantee). The company signs a Memorandum of Understanding with DNR that addresses the conditions of that particular mine. The Memorandum forecasts a schedule of deposits into the Trust Fund and specifies which other bond mechanism is reduced. The Memorandum also specifies the conditions by which DNR would, in the latter years of the mine's life, reimburse the company for reclamation work they complete. The Department of Revenue invests the fund for the company and it grows through interest and deposits by the company. As the mine closure approaches, the Trust Fund is the major source of funding for reclamation. At the end of mine life, the company closes the mine, and as each reclamation task is completed, DNR reimburses the company for the cost of reclamation work.

Does use of a Trust Fund relieve a company of its responsibility to reclaim a mine? No. The Trust Fund is only a place to hold the money. The company still has the responsibility to reclaim the site. If the money is not adequate, it is still the company's responsibility to reclaim the mine.

Who Manages a Company's Mine Reclamation Trust Fund? Department of Revenue. The Department of Revenue manages the money in the trust fund. Through a Memorandum of Understanding, the company may advise the Department of Revenue on investment goals (i.e., be more aggressive on equities in the early years of the trust fund, but more conservative as mine closure approaches).

Who Authorizes Expenditures from the Fund for Reclamation? DNR. The Department of Natural Resources would authorize a reimbursement to the company for reclamation work done, or would spend the money itself in the event the company defaults on its reclamation obligation.

Most of this bill accommodates the statutory needs of "large mines." Is that the same as a "lode mine?" More or less. Most of this bill does not affect most placer mines and exploration projects. The bill's three major changes are useful for large mines such as Greens Creek, Red Dog, Pogo, or Fort Knox. All of these are lode mines. Because of the financial realities of the mining industry, all lode mines are expected to be large mines. Therefore, rather than define "large mines" in statute, the bill uses the term "lode mines" to accomplish the same result.

What are Alaska's reclamation bonds?

LARGE MINE BONDS		
Mine	Company	Amount
Red Dog	Teck-Cominco	\$ 21,910,250
Pogo	Teck-Cominco	\$ 22,474,816
Ft. Knox	FGMI	\$ 12,150,415
True North	FGMI	\$ 1,381,100
Greens Mine	Kennecott	\$ 26,238,518
Poker Flats	Usibelli Coal Mine	\$ 3,485,917
Two Bull Ridge	Usibelli Coal Mine	\$ 4,075,880
Gold Run Pass	Usibelli Coal Mine	\$ 637,100
ALASKA'S PLACER MINE BOND POOL		
Bond Pool	Refundable	\$ 342,621
	Non-Refundable	\$ 597,541
	TOTAL	\$ 93,294,158

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

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February 24, 2004

The Honorable Scott Ogan, Chair
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99802

RE: SB 339, Mining Reclamation Bonding

Dear Senator Ogan:

I am writing to request a hearing next week for SB 339, 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,

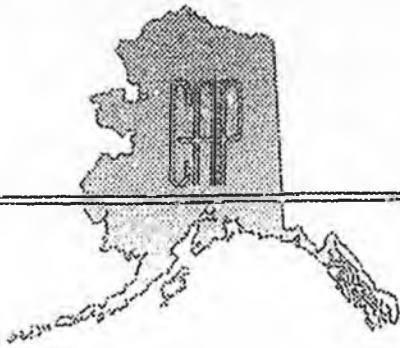


Thomas E. Irwin
Commissioner

Enclosure

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

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



Briefing Paper

SB 339

Thank you for the opportunity to speak to this bill.

My name is Rich Heig. I am president of the Council of Alaska Producers, and also General Manager of Greens Creek Mining Company.

The Council of Alaska Producers is an organization that educates and promotes responsible development of natural resources in the State of Alaska. We are made up of the larger mining operations and potential operations of Alaska, all of which are also members of the Alaska Mining Association.

The Producers Council supports SB 339.

This bill will make several important changes to the requirements for bonding and financial assurance for mining operations.

This bill allows the state to recognize the higher reclamation requirements associated with hard rock mining operations as compared to placer operations. These mines recognize their responsibility for reclamation and closure. This bill supports what DNR and DEC have also been requiring for several years.

This bill also recognizes the need for companies to have several methods available to them for providing financial assurances for reclamation and closure requirements. The cost and availability of bonds or letters of credit are becoming more difficult. This bill allows for other means of financial assurance, including CD's, treasury accounts, corporate guarantees, or other methods.

The third part of the bill establishes a trust fund held by the state that can assist in long term closure and monitoring. This account, funded by mining companies, is another alternative to ensure long term closure and reclamation are accounted for.

The Producers Council supports passage of SB 339 and ask that it be passed out of Committee.

Rich Heig