

SB

166

<TARGET><BILL>SB 166</BILL><SUBJECT>SB
166</SUBJECT><COMM>SRES30</COMM></TARGET>

STATE CAPITOL
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Governor Bill Walker
STATE OF ALASKA

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January 26, 2018

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

Dear President Kelly,

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to amendments to qualifications to acquire or hold mining rights and to annual rental rates for mining claims, leasehold location, prospecting site and mining lease.

The bill would repeal State annual labor requirements for State and federal mining claims, as well as annual labor requirements for State mining leasehold locations. Administration of the annual labor requirements is costly to the Department of Natural Resources. Minor errors on affidavits may result in unintentional abandonment of a claim or leasehold location by the locator. Further, miners on State land are already able to avoid conducting labor by paying a fee in lieu of labor. Instead of requiring annual labor or payment in lieu of labor, the progressive rental rates for State mining locations and leases will be increased. This will ease administration of mining claims and also discourage individuals from holding claims without developing them.

The bill also provides for a new requirement in order to be qualified to acquire or hold a mining right. A person or entity must be a "bona fide miner" in addition to the other requirements of AS 38.05.190. A "bona fide" miner is defined as one who locates or holds a mining claim or lease in good faith for purposes of mineral exploration and development and not for the prevention of mineral exploration or development. The bill also provides a method for the Department of Natural Resources to request affidavits stating that a miner is "bona fide." This provision provides additional assurance that mining locations and leases will be acquired and held in good faith.

For State claims and leasehold locations, the bill would also provide a waiver of the penalty for cure of abandonment caused by a failure to properly record a statement of annual labor as required before the effective date of sections 8 and 9 of the bill.

The bill contains a transition provision providing for authority for the Department of Natural Resources to adopt regulations necessary to implement the changes made by the bill, effective immediately. The rest of the bill is effective September 2, 2018, and an applicability provision makes it clear that for purposes of annual labor, the bill will be applicable to the labor year that otherwise would begin September 1, 2018.

The Honorable Pete Kelly
Mining Rights Transmittal
January 26, 2018
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I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Bill Walker". The signature is written in a cursive style with a large, prominent "B" and "W".

Bill Walker
Governor

Enclosure

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version:	SB 166
Fiscal Note Number:	1
(S) Publish Date:	1/29/2018

Identifier: DNR-MLW-1-25-18
Title: MINING; CLAIMS; RIGHTS; RENTAL
RATES; LABOR
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Governor

Department: Department of Natural Resources
Appropriation: Fire Suppression, Land & Water Resources
Allocation: Mining, Land & Water
OMB Component Number: 3002

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

1250 UGF Rev (UGF)			(143.0)	(143.0)	(143.0)	(143.0)	(143.0)
1251 Non-UGF (Other)			295.0	295.0	295.0	295.0	295.0
Total	0.0	0.0	152.0	152.0	152.0	152.0	152.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 12/31/19

Why this fiscal note differs from previous version/comments:

Initial version

Prepared By: Brent Goodrum, Director
Division: Mining, Land and Water
Approved By: Andrew T. Mack, Commissioner
Agency: Department of Natural Resources

Phone: (907)269-8625
Date: 01/25/2018 03:30 PM
Date: 01/25/18

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

Analysis

This bill would eliminate state requirements to conduct annual labor and yearly affidavits for annual labor on state mining claims, leasehold locations, and mining leases. The bill would also increase the annual mining rental rates for mining claims, leasehold locations and mining leases.

The Department of Natural Resources would need to adjust current regulations to incorporate these changes.

Changes to Department Operations

As proposed, the bill will not result in a fiscal impact to the operating expenditures of the Department of Natural Resources. Annual affidavits create a seasonal workload which are currently handled by staff with other responsibilities. During the influx of work related to annual affidavits capacity to do other work is temporarily reduced. Eliminating this requirement will not result in the ability to reduce staff, but will allow those staff to focus on other tasks.

Anticipated Revenue Changes

This bill will result in a net addition to state revenue of an estimated \$152.0 per year.

The rental increase in section 5 of the bill includes an inflation adjustment that is already scheduled to occur under existing law, plus an increment intended to offset revenue losses. The anticipated revenue of annual mining rental rates for mining claims, leasehold locations and mining leases is estimated to be \$736.0 annually.

By statute this revenue will be distributed as:

- 49.5% DGF
- 50% Permanent Fund
- 0.5% Public School Trust Fund

Summary

(328.0) from lost cash-in-lieu	DGF
(113.0) from lost recording fees	DGF
364.0 from increased rentals	DGF
<hr/>	
(77.0) net change	DGF
368.0 from increased rentals	PFUND
4.0 from increased rentals	School Trust Fund
<hr/>	
295.0 net change in restricted funds	
(143.0) from lost penalty payments	UGF
<hr/>	
152.0 net change in total state revenue	

Fiscal Analysis for SB 166

Lost Revenues

Line 1		\$ 328,000	Cash Payments Received In-Lieu of Labor (DGF)
Line 2	+	\$ 113,000	Recorder Fees (DGF)
Line 3	+	\$ 143,000	Penalties and Fees Related to Annual Labor (UGF)
Line 4	=	<u>\$ 584,000</u>	Total Lost Revenues Associated with Annual Labor

Count of Claims

Line 5		21,271	Number of 160-Acre Claims
Line 6	×	4	Number of 40-Acre Claims in a 160-Acre Claim
Line 7	=	<u>85,084</u>	Number of 40-Acre Equivalent Claims in 160-Acre Blocks
Line 8		57,975	Number of Acres under Lease
Line 9	=	40	Number of Acres in a 40-Acre Claim
Line 10	=	<u>1,449</u>	Number of 40-Acre Equivalent Claims Held by Leases
From Line 7		85,084	Number of 40-Acre Equivalent Claims in 160-Acre Blocks
From Line 10	+	1,449	Number of 40-Acre Equivalent Claims Held by Leases
Line 11	+	13,294	Number of 40-Acre Claims
Line 12	=	<u>99,827</u>	Total Number of 40-Acre Equivalent Claims

Lost Revenue per Claim Equivalent

From Line 4		\$ 584,000	Total Revenues Associated with Annual Labor
From Line 12	÷	<u>99,827</u>	Total Number of 40-Acre Equivalent Claims
Line 13	=	\$ 5.85	Revenues needed per 40-Acres to Break Even in Total State Revenues
Line 14	÷	49.5%	Percent of Revenues to General Fund
Line 15	=	\$ 11.82	Revenues needed per 40-Acres to Break Even in General Funds

Net Change in General Fund

Line 15 Rounded Down	=	\$ 10.00	Additional Rental Proposed per 40-Acre Claim Equivalent
From Line 12	x	99,827	Number of 40-Acre Equivalent Claims in 160-Acre Blocks
Line 16	=	\$ 998,274	Total New Revenues from Rental Increase
From Line 14	x	49.5%	Percent of New Revenues Distributed to the General Fund
Line 17	=	\$ 494,146	Total New General Fund Revenues from Rental Increase
From Line 4	-	\$ 584,000	Total Lost Revenues Associated with Annual Labor
Line 18	=	\$ (89,854)	Net Change in General Fund if SB166 Passes as Written

Net Change in Other Funds

From Line 16	=	\$ 998,274	Total New Revenues from Rental Increase
Line 19	x	50.0%	Percent of Rentals Distributed to Permanent Fund
Line 20	=	\$ 499,137	Total New Revenues Distributed to Permanent Fund

From Line 16	=	\$ 998,274	Total New Revenues from Rental Increase
Line 21	x	0.5%	Percent of Rentals Distributed to Public School Trust Fund
Line 22	=	\$ 4,991	Total New Revenues Distributed to Public School Trust Fund

Summary

From Line 17	=	\$ 494,146	Total New Designated General Fund Revenues from Rental Increase
From Line 20	+	\$ 499,137	Total New Permanent Fund Revenues from Rental Increase
From Line 22	+	\$ 4,991	Total New Public School Trust Fund Revenues from Rental Increase
Equals Line 16	=	\$ 998,274	Total New Non-UGF Revenues from Rental Increase
Line 1 plus Line 2	-	\$ 441,000	Total Lost Non-UGF Revenues Associated with Annual Labor
Line 23 (fiscal note figure)	=	\$ 557,274	Net Change in Non-UGF State Revenues if SB166 Passes as Written
From Line 4 (fiscal note figure)	-	\$ 143,000	Total Lost UGF Revenues Associated with Annual Labor
Line 24 (fiscal note figure)	=	\$ 414,274	Net Change in Total State Revenues if SB166 Passes as Written

	0-5 Years	6-10 Years	11 or More Years
Rental Amount in AS 38.05.211 (1989 values)	\$ 20	\$ 40	\$ 100
Actual Rental Amount Paid Today (11 AAC 86.221, last adjusted in 2009)	\$ 35	\$ 70	\$ 170
Inflation Rate from 2009 to 2018	18%	18%	18%
Adjusted Rental to Rebase Inflation to 2018	\$ 41	\$ 83	\$ 201
<i>Inflation Adjusted Rental Rounded to Nearest \$5 per AS 38.05.211(d)</i>	\$ 40	\$ 85	\$ 200
Increase Required for GF Breakeven (rounded)	\$ 10	\$ 10	\$ 10
Proposed New Rental Rate	\$ 50	\$ 95	\$ 210



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Natural Resources

COMMISSIONER'S OFFICE

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March 2, 2018

The Honorable Cathy Giessel
State Capitol, Rm 3
Juneau, AK 99801-1182

Dear Senator Giessel and Members of the Senate Resources Committee:

The Department of Natural Resources (DNR) provides this letter as supporting material for SB 166 to explain the Department's reasoning for introducing this bill. Since its release, several individuals have brought forward questions and concerns about the bill. We hope to address some of those questions here.

1. What problem is this bill trying to solve?

Miners must perform annual labor on their claims¹ under AS 38.05.210. They must also record an annual affidavit to document that the annual labor was performed. An affidavit of annual labor that does not "accurately set out the essential facts is void and of no effect" under AS 38.05.265(a). The regulation 11 AAC 86.220(c) lays out these essential facts, including, among other items, the location of the claim, the name and current mailing address of each owner, and the dates the labor was performed during the labor year.

Numerous "unintentional abandonments" occur due to failure to accurately set out the essential facts. For instance, if a miner does not accurately set out the name or number of the mining claim, such failure constitutes abandonment of the mining claim. If a claim is abandoned, another locator can stake a claim in the area and secure exclusive rights to those minerals. The issue of "unintentional abandonment" has caused concerns in the mining community about the security of mining claims and their investments.

2. How can a miner "fix" an abandonment of claims?

When abandonment occurs, a miner has limited options under the existing law to "fix" the abandonment:

- **Statutory Cure Provision:** Under AS 38.05.265(b), a miner may "cure" an abandonment by (1) properly recording an affidavit of annual labor that sets out the essential facts accurately and (2) paying a penalty

¹ For purposes of this document, the term "mining claim" will be used to include state mining claims as well as state mining leasehold locations. A leasehold location is similar to a claim, but is located in an area that is only open for mineral leasing. The mineral rights are held by the leasehold location while the lease application is processed.

equal to the annual rent for the claim. But this option is also only available if nobody else has located a mining claim or leasehold location for those minerals.²

- **Relocation:** Under AS 38.05.265(a), a locator can wait one year after abandonment and then relocate the claim (so long as no other locator has staked a claim to those minerals in the interim).
- **Substantial compliance:** A miner can apply for a certificate of substantial compliance from the Commissioner under AS 38.05.185(b). However, the miner must have “complied as nearly as possible under the circumstances of the case” with the statutory and regulatory requirements. Further, substantial compliance may only be granted if there are no conflicting rights asserted by another person.
- **Lease:** While not a “fix” to abandonment, converting a mining claim to a lease prevents the risk of abandonment and thus provides greater security of tenure. Any mining claim holder may convert the claim to a lease under AS 38.05.205. Leases are not subject to the abandonment statute (AS 38.05.265).

Note that under current law, a miner has no statutory ability to “fix” abandonment of claims if another miner has established rights to the minerals within the area of the abandoned claim.

3. What can DNR do to “fix” abandonment if there is a conflicting right?

The opportunities to address abandonment such as the “cure” and substantial compliance statutory provisions do not apply if there is a conflicting right. This is because allowing the abandoned claim to be “revived” through cure or other provision would impact the property rights of the other miner or property holder who has established rights under the law. This sometimes results in situations where a miner has invested in and mined an area for several years but lost his or her mineral rights due to a failure to accurately set out the essential facts in an affidavit of labor. In this situation, the department is unable to assist a miner using the statutory tools mentioned above. These situations can create potential conflict and confusion. This is one reason the department believes this legislation is important.

4. Why can’t DNR fix this problem in regulation or by administrative action?

The nature of the statutes prevents DNR from fully addressing this issue by regulation or agency action. A mining claim is self-initiated, self-perpetuated, and the tenure of the claim is dependent on the miner’s fulfillment of certain requirements. To a large degree mining claims are held, or lost, by the miner’s actions or inactions. In other words, DNR does not “take away” mineral rights or “cause” an abandonment. Where abandonment occurs, the statutes provide the Department little discretion or leeway to take departmental action to remedy an abandonment beyond the remedies listed above.

² Note: There is a provision of the annual labor statute that provides for amendments to affidavits of annual labor made within two years. However, this provision only applies to “non-essential” facts (11 AAC 86.220(g)). Therefore, this provision is not useful to “fix” an abandonment that occurred as a result of failure to accurately set out the essential facts.

5. Why doesn't this legislation address "over-staking" of claims?

DNR cannot prevent a miner from staking a mining claim and recording a location certificate in the Recorder's Office under existing law. This is due to the nature of the claim system, in which an area is open for mineral entry unless it is closed. Changing this legal framework would require a considerable shift from the existing system.

6. Could DNR just provide a grace period for miners to fix failures to accurately set out essential facts on affidavits or a failure to pay rent?

We assume "grace period" to mean an opportunity to cure an abandonment without allowing anybody to stake the area of the claim during the period of abandonment before cure. There is not authority for the commissioner to temporarily prevent claim staking, or to allow the cure of an abandonment after overstaking, under existing statutes.

State lands are open for mineral entry unless otherwise closed. AS 38.05.185(a) states, in part, "State land may not be closed to location...unless the commissioner makes a finding that mining would be incompatible with significant surface use on the state land." Therefore, once an abandonment occurs, the commissioner cannot prevent another locator from staking a claim without going through a lengthy public process to close the land to mining altogether.

7. How does a mining claimholder know if a claim has been staked over his claim?

Proper location of a mining claim always requires notice under AS 38.05.195(c). The locator must attach a notice to a monument on the ground so that other miners in the area see it. Notice is also provided to the public by recording the location notice in the Recorder's Office within 45 days of locating the claim. Under the current statutory scheme, the entire location process occurs on the self-initiation of a miner, with no approval document from DNR required. Miners stake in the field, provide notice in the field, and record the documents in the Recorder's Office.

8. Why does DNR allow over-staking of federal claims?

State law allows staking of "at-risk" claims on "state-selected land," a term defined broadly in AS 38.05.275(b) to include federal lands for which a state selection application was filed (including federal lands with existing federal claims). Therefore, under current law, any person may locate a "state-selected" or "at risk" claim, and such a claim could be over a current federal claim. If the land is conveyed to the State, and the area was open to mineral entry, then the state-selected claim falls into place as a state mining claim or leasehold location. In theory, this means a federal claimholder could stake a state-selected claim over one's own federal claim, relinquish the federal claim, and assuming the State was conveyed the land and that the State opened the area to mineral location, then the federal claimholder could ultimately obtain a state mining claim or leasehold location in place of the federal claim.

However, the statute has no limitations on who can stake an at-risk claim. Therefore, the current law provides no preference right to federal mining claimholders. Another person might locate a state-selected claim over a federal claim before the federal claimholder does.

9. What considerations did DNR evaluate when attempting to revise statutes regarding affidavits of labor?

First, DNR began looking at regulatory changes that could improve the situation of abandonments. Because unintentional failures to accurately set out essential facts cause abandonments, the department issued a scoping notice seeking public comment on possible changes to the regulations. The department included a version of draft regulations for comment, which streamlined the required essential facts. However, even a modification of the essential facts does not completely solve the issue. Although there would be fewer fatal flaws in accurately setting out essential facts that result in abandonment, many of the administrative issues would remain. The only way to fully address affidavit of labor issues is through a statutory fix.

For these reasons, DNR decided to introduce legislation. As we evaluated options to address the issue, it became clear that a simple fix was not available. Many alternatives shifted a significant workload onto the department. In this fiscal environment, it did not seem practical to request additional staff. The “win-win” solution that we came up with (that is, a way to ease administrative burden on miners and improve miners’ tenure security without increasing department workload) was the repeal of the annual labor requirement. There are certainly other ways to address the issue, and we welcome those discussions, but we decided to move forward with this solution.

10. Why is DNR pursuing the repeal of annual labor requirements rather than some other option?

We spent a significant amount of time evaluating many other options, including some of those offered by interested parties. Our goal was to find the most effective and compressive solution to the problem. Ultimately, we concluded that if the annual labor requirement is retained, it will continue to be a significant cause of unintentional abandonment due to failure to properly record (including failure to accurately set out the essential facts). This is true regardless of how the immediate issue is resolved.

DNR believes that the holder of a mining claim is very likely to work that claim to generate value from their exclusive rights to the locatable minerals, even without a statutory requirement to conduct annual labor. The statutory requirement to pay annual rent provides an additional economic incentive to do work on the claim. If true that the annual labor requirement is not necessary to incent work to be done, and given that the annual labor requirement creates a threat to tenure, DNR decided to propose the repeal of the annual labor requirement. To be clear that the Department still expected work to be conducted, DNR included a “bone fide” miner provision in the proposed legislation.

11. What other options may resolve this issue?

Another option to address the immediate issue is to simply strike the “essential facts” requirement from the affidavit, or at least change the statutory language such that a failure to accurately set out essential facts would not render the affidavit void. However, at least some essential facts are required to comply with the annual labor requirement, to index within the Recorder’s Office, and to know which affidavit attaches to which claim. Without any essential facts, the purpose and effectiveness of the affidavit of annual labor is diminished as the record keeping ability is lost. Therefore, DNR did not perceive striking the essential facts requirement as the best option in the larger scheme of things.

Perhaps the next best option to a repeal of annual labor would be removing annual labor from the automatic abandonment statute. This could mean there would be no repercussion for failure to comply, or there could be a process by which there would be a required period with an opportunity to cure before abandonment became effective. The latter option would increase workload on the department, as DNR staff would be required to notify miners of problems in affidavits, provide a time period to cure, and conduct all relevant follow up correspondence and administration regarding whether the cure occurred. The Department strives to solve miners' challenges without creating additional administrative burden and costs.

12. Why doesn't this bill address additional issues that were brought to the attention of DNR?

The Department has found that a bill that attempts to solve many problems is difficult to pass. We opted to focus our efforts on the most seemingly pressing mineral property issue in this bill. We do have many of the additional issues on our legislative priority list and hope to address those issues in the near future.

13. Can you please explain the "bona fide miner" requirement that is included in the bill?

Every miner that currently conducts annual labor is demonstrating by their actions that they are working for the benefit or development of the mining claim. Even if the labor requirement is removed, DNR believes that miners will work towards development of their mining claims. Further, courts have found there to be an implicit "good faith" requirement for mining claims.

That said, DNR wanted to make sure it addressed any concerns raised about the removal of the annual labor requirement. One such concern is that it could increase the ability for parties to use this change to deny access to mineral resources for development. DNR wanted to be clear that the repeal of annual labor did not imply that DNR no longer expected claim holders to work towards mineral development.

This requirement is simple in administration. For leases, an affidavit stating that the miner is bona fide must be submitted before the lease is issued. For claims, if DNR has concerns a miner is holding claims to prevent mineral exploration or development, then it may request an affidavit from the miner stating that he or she is a "bona fide miner." This requirement is not intended to be extensive or burdensome, it is intended to prevent acquisition of mining claims with the intent to impede development. Thus, it serves a similar purpose to an annual affidavit without the risk of unintentional abandonment.

14. Why is the bill proposing such a large increase on claim rental fees?

While it appears to be a large increase in annual rent, the actual increase is \$10 per claim. The appearance comes from comparing the 1989 rental rate in the statute to the proposed 2018 rate.

However, rates are adjusted every 10 years by regulation, and currently miners pay \$35 dollars per claim for a quarter-quarter section MTRSC (\$130 for 11 + years). There is an upcoming 10-year adjustment in 2019 (which is the first payment due under this bill). DNR predicts that this adjustment will likely result in a rent of \$40 for a quarter-quarter section for a claim that is less than 5-years-old (\$200 for 11+ years).

If this bill does pass, the proposed rates in the bill are \$10 higher than the predicted 2019 adjustment rates. However, the claimant will no longer have to pay recording fees for affidavits. Additionally, if the miner is profitable, the increased rent is offset because rent can be deducted from royalty requirements.

15. Do the existing affidavits of annual labor contain information that is vitally important to future mineral development?

The recorded document might contain some information that could be helpful. Specifically, the amount of labor may indicate the size of a mineral prospect. However, we do not believe that the value from maintaining the affidavit justifies the continued threat to claim tenure security posed by the annual requirement.

16. How would removing the annual labor requirement affect federal mining claims?

DNR does not believe this bill has any impact on federal requirements for federal claims. The statutes regarding federal claims that are modified or removed by this bill are state statutes which maintain that "annual labor shall be performed . . . to the extent required by the laws of the United States applicable to Alaska." In other words, the statute is redundant of federal statutes, essentially reiterating that federal law should be followed.

We removed the state requirements for annual labor on federal claims as a matter of consistency. However, if the repeal of these statutes is deemed to be damaging to the implementation of the federal system in some way, the root problem being addressed by this bill is still solved without the repeal of the statutes that reference federal mining claims.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Hansen', with a long horizontal flourish extending to the right.

Heidi R. Hansen
Deputy Commissioner

SB 166 - Repealed Statutes

Sec. 27.10.130. Value of labor or improvements required on placer claims.

Upon each placer mining claim located after March 14, 1935, until patent is issued, not less than \$100 worth of labor shall be performed or improvements made during each year for each 20 acres or excess fraction contained in the claim.

Sec. 27.10.150. Annual labor or improvements required.

(a) During each year beginning at noon on September 1, and until patent is issued, annual labor shall be performed or improvements made on, or for the benefit of or development of, each mining claim in the state to the extent required by the laws of the United States applicable to Alaska.

(b) If the owner of a mining claim fails to perform the annual labor or make the improvements required by the laws of the United States, the claim is forfeited and open to location by others as if no location of it had ever been made.

(c) If the general laws of the United States requiring annual labor upon mining claims in Alaska are suspended or waived, administratively or by statute, the laws of the state requiring annual labor under this section upon mining claims are likewise suspended or waived upon the same terms and conditions.

Sec. 27.10.160. Affidavit of labor or improvements.

Within 90 days after September 1 of each year the owner of a mining claim, or some other person having knowledge of the facts, shall make and record with the recorder for the district in which the claim is located an affidavit showing the performance of labor or the making of improvements. The affidavit must contain

- (1) the name or number of the mining claim and where situated;
- (2) the number of days' work done and the character and value of the improvements made;
- (3) the date of the performance of the labor and of the making of improvements;
- (4) at whose instance the work was done or the improvements made;
- (5) the actual amount paid for the work and improvements, and by whom paid, when the work was not done by the owner or the lessee of the owner.

Sec. 27.10.170. Effect of recording affidavit of labor or improvements.

An affidavit recorded under AS 27.10.160 is prima facie evidence of the performance of the work or of making the improvements stated in it.

Sec. 27.10.180. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.

If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days and, if at the expiration of 90 days after the service of the notice in writing or 90 days after the completion of the publication the delinquent co-owner fails or refuses to contribute the proportion of the required expenditures, that co-

owner's interest in the claim is forfeited to the co-owners who have made the expenditures.

Sec. 27.10.190. Recording the notice to contribute and affidavits.

(a) Within 120 days after personal service or within 120 days after the completion of publication of the notice provided for in AS 27.10.180, the co-owner who claims the forfeiture shall record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

(1) an affidavit of the person serving the notice giving the time, place, and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer, or foreman of the newspaper giving the name of the newspaper, the place where, and the time during which the notice was published, and the number of insertions;

(2) an affidavit of the co-owner who claims the forfeiture stating that neither the delinquent co-owner nor any person acting for the delinquent co-owner has paid or tendered to the affiant the delinquent's proportion of the expenditures for annual labor or improvements.

(b) The record of the notice and affidavits or a certified copy of it is prima facie evidence of the facts contained in it.

Sec. 27.10.200. Lienholder may perform the annual labor.

A person who holds a claim to or lien upon an unpatented mining claim under a certificate of sale, mortgage, attachment, levy, judgment, or other lien, may, when necessary for the protection of the lien or claim, go upon the mining claim and perform or cause to be performed the annual labor required by law to prevent forfeiture. Before performing the labor the person shall mail a written notice of intention to perform the annual labor on the claim to the owner of the claim at the owner's last known address.

Sec. 27.10.210. Lien for performance of annual labor.

(a) The person performing or causing to be performed annual labor upon an unpatented mining claim as provided in AS 27.10.200 shall have a lien upon the claim for the assessment work, including the reasonable cost of transportation to and from the claim incurred in doing the work. The lien is enforced either as in other suits for the foreclosure of liens upon real property or as supplemental accruing costs in an action, if any, then pending in which the claim has been levied upon by attachment, execution, or other court process.

(b) A person claiming a lien under this section shall within 90 days after the completion of the annual labor for which the lien is claimed record in the office of the recorder of the recording district in which the property on which the lien is claimed is situated a notice of claim of lien, verified by the oath of the claimant or another person having knowledge of the facts, and stating the name of the owner or reputed owner of the property, the amount of the claim, the time of the performance of the annual labor for which the lien is claimed, the nature of the labor done or improvements made, and the amount of the claim, including costs of transportation, after deducting all just credits and offsets.

(c) An independent suit or action brought to enforce a lien under this section shall be commenced within six months after the recording of the notice of claim of lien.

Sec. 27.10.220. Lien for annual labor is independent of other liens. The lien given for the performance of annual labor by AS 27.10.210, if the work is done in good faith and necessarily for the protection either of possession under a certificate of sale or of an attachment, levy, mortgage, judgment, or other lien, remains in effect notwithstanding the contemporaneous or subsequent vacation, dissolution, or setting aside of, or redemption from, the certificate of sale, attachment, levy, mortgage, judgment, or other lien.

Sec. 27.10.230. Surveys may qualify as annual labor.

The term "labor" where used in AS 27.10.130 and 27.10.150 includes, without being limited to, geological, geochemical, and geophysical surveys conducted by qualified experts and verified by a detailed report recorded in the recording district office in which the claim is located that sets forth fully (1) the location of the work performed in relation to the point of discovery and boundaries of the claim, (2) the nature, extent, and cost thereof, (3) the basic findings therefrom, and (4) the name, address, and professional background of the person or persons conducting the work. Surveys of this kind, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, and each of these surveys shall be nonrepetitive of any previous survey on the same claim.

Sec. 27.10.240. Definitions for AS 27.10.230.

In AS 27.10.230,

(1) "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(2) "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(3) "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations;

(4) "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys.

Sec. 38.05.210. Annual labor.

(a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim, leasehold location, and mining lease on state land except that, where adjacent claims, leasehold locations, or mining leases are held in common, the expenditure may be made on any one claim, leasehold location, or mining lease. The commissioner shall establish the date of the

commencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the following annual rates: (1) \$100 per claim, leasehold location, or lease if the claim, leasehold location, or lease is a quarter-quarter section MTRSC claim, leasehold location, or lease; (2) \$400 for each quarter section MTRSC claim, leasehold location, or lease; and (3) \$100 for each partial or whole 40 acres of each mining claim, leasehold location, or lease not established using the MTRSC system. If more work is performed than is required by this section to be performed in any one year, the excess value may be applied against labor required to be done during the subsequent year or years, for as many as four years. Instead of performing annual labor, the holder of a claim, leasehold location, or mining lease may make a cash payment to the state equal to the value of the labor required by this subsection.

(b) During the year in which annual labor is required or within 90 days after the close of that year, the owner of the mining claim, leasehold location, or mining lease, or some other person having knowledge of the facts shall record with the recorder of the district in which the claim, leasehold location, or mining lease is located a signed statement setting out the information, as may be required by the commissioner, concerning the annual labor of the preceding year, any labor in excess of that required for the preceding year, and any payment of cash instead of annual labor. The statement, properly recorded, is prima facie evidence of the performance of the labor. The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with AS 38.05.215 - 38.05.235.

(c) The statement of annual labor required in (b) of this section may be amended within two years of the date by which the annual labor statement was required to be recorded. An amended statement shall be recorded for record in the same manner as the original statement. Additional labor claimed in an amended statement may not be applied against labor required to be done during a subsequent year.

(d) [*Repealed, Sec. 10 ch 101 SLA 1989*].

Sec. 38.05.215. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.

If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days. If at the expiration of 90 days after the service of the notice in writing, or 90 days after the completion of the publication the delinquent fails or refuses to contribute the required proportion of the expenditures, the interest of the delinquent co-owner in the claim is forfeited to the co-owners who have made the expenditures.

Sec. 38.05.220. Recording the notice to contribute and affidavits.

(a) Within 120 days after personal service, or within 120 days after the completion of publication of the notice provided for in AS 38.05.215, the co-owner who claims the forfeiture shall record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

(1) an affidavit of the person serving the notice giving the time, place, and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer, or foreman of the newspaper giving the name of the newspaper, the place where, and the time during which the notice was published and the number of insertions;

(2) an affidavit of the co-owner who claims the forfeiture stating that neither the delinquent co-owner nor any person acting for the delinquent co-owner has paid or tendered to the affiant the delinquent's proportion of the expenditures for annual labor or improvements.

(b) The record of the notice and affidavits or a certified copy of it is prima facie evidence of the facts contained in it.

Sec. 38.05.225. Lienholder may perform the annual labor.

A person who holds a claim to or lien upon an unpatented mining claim under a certificate of sale, mortgage, attachment, levy, judgment, or other lien may, when necessary for the protection of the lien or claim, go upon the mining claim and perform or cause to be performed the annual labor required by law to prevent forfeiture. Before performing the labor the claimant or lien holder shall mail a written notice of intent to perform the annual labor on the claim to the owner of the claim at the last known address of the owner of the claim.

Sec. 38.05.230. Lien for performance of annual labor.

(a) The person performing or causing to be performed annual labor upon an unpatented mining claim as provided in AS 38.05.225 shall have a lien upon the claim for the assessment work, including the reasonable cost of transportation to and from the claim incurred in doing the work. The lien is enforced either as in other suits for the foreclosure of liens upon real property or as supplemental accruing costs in an action, if any, then pending in which the claim has been levied upon by attachment, execution, or other court process.

(b) A person claiming a lien under this section shall, within 90 days after the completion of the annual labor for which the lien is claimed, record in the office of the recorder of the recording district in which the property on which the lien is claimed is situated a notice of claim of lien, verified by the oath of the person claiming the lien or that of some other person having knowledge of the facts, and stating the name of the owner or reputed owner of the property, the amount of the claim, the time of the performance of the annual labor for which the lien is claimed, the nature of the labor done or improvements made, and the amount of the claim, including costs of transportation, after deducting all just credits and offsets.

(c) An independent suit or action brought to enforce a lien under this section shall be commenced within six months after the recording of the notice of claim of lien.

Sec. 38.05.235. Lien for annual labor is independent of other liens.

The lien given for the performance of annual labor by AS 38.05.230, if the work is done in good faith and necessarily for the protection either of possession under a certificate of sale or of an attachment, levy, mortgage, judgment, or other lien, remains in effect notwithstanding the contemporaneous or subsequent vacation, dissolution, or setting aside of, or redemption from, the certificate of sale, attachment, levy, mortgage, judgment, or other lien.

Sec. 38.05.240. Labor defined for AS 38.05.210 - 38.05.235.

In AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical, geophysical, and airborne surveys conducted by qualified experts and verified by a detailed report filed in the recording district office in which the claim, leasehold location, or mining lease is located which sets out fully (1) the location of the work performed in relation to the point of discovery and boundaries of the claim, leasehold location, or mining lease, (2) the nature, extent, and cost of it, and (3) the name, address, and professional background of the person conducting the work. The commissioner, by regulation, shall define the nature of acceptable survey work and the qualifications of a person competent to perform this work. The airborne surveys, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, leasehold location, or mining lease, and each of those surveys shall be nonrepetitive of any previous survey on the same claim, leasehold location, or mining lease.

Sec. 38.05.242. Definitions for AS 38.05.210 - 38.05.240.

In AS 38.05.210 - 38.05.240,

(1) "airborne survey" means a survey from the air for mineral deposits by the proper application of magnetometers, electromagnetic input systems, infrared detectors, side-looking radar, vertical and panoramic cameras, and other devices as they relate to the search for and discovery of mineral deposits;

(2) "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(4) "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuances in geological formations;

(5) "MTRSC system" means the system described in AS 38.05.195(b)(1) based on the ground location of a complete quarter section or quarter-quarter section of a township on a rectangular survey system;

(6) "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

I would like to make some comments regarding Senate Bill SB166. I, and my family, have been involved in mining in the State of Alaska for over 40 years. When I first staked claims, I was not a "bona fide miner"; I was a greenhorn, like so many young people are when they first set sail. If I had to provide a notarized statement saying that I was a "bona fide miner" or a "bona fide fisherman" or other related "bona fide occupation" before working as such over 40 years ago, I may have gone a different direction. I don't think Alaska should be denying the right to acquire claims based on your prior experience.

The "bona fide miner" clause is inappropriate and possibly violates the Alaska State Constitution. It is the State Constitution's policy to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest. The State Constitution sets forth that discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which were subject to location under the federal mining laws.

Allowing this to pass as written might imply that any resource industry (fishing, lumber, sand/gravel, etc) could deny those who do not have proper credentials from acquiring permits, licenses, shares, etc to participate in those industries. It curtails entrepreneurship and exploration.

The Mining Law of 1872, as amended, allows citizens of the United States the opportunity to explore for, discover, develop, and purchase certain valuable mineral deposits on those federal lands that are open for mining claim location and patent ("open to mineral entry"). The Mining Law also allows for the enactment of state laws governing location and recording of mining claims and sites that are consistent with federal law.

The annual labor requirement has been part of the backbone of the 1872 Mining Law and should be retained. If the State language addressing annual labor needs to be changed to allow for remedy when certain "essential facts" are omitted, then perhaps a "grace period" could be implemented.

As a small family operation miner of over 40 years, I can tell you that increasing the rental fees, as suggested in this bill, will seriously impact myself, my children and many other small miners. Small miners in Alaska have been responsible for some very big discoveries. Alaska should not be making it more burdensome to be a part of the mining industry; it is an industry that could provide Alaska with a great future.

Instead of imposing additional burdens on Alaskans and industries that can contribute to Alaska's revenue, the State should be encouraging development of minerals and their associated value-added industries.

Sincerely, Michael Busby