

LEG. FINANCE - BILLS 1981 - 1982 1731

CSSB 842 cont. - SB 843

1731

if the United States Supreme Court clearly holds that the existing program would have been constitutional had the accumulation of dividends been prospective rather than "retrospective" back to statehood.

Section 4. This section amends the existing program by adding a provision to include children in the dividend distribution program. The method of including children is the same as that established under AS 43.23.015, in section 1 of the bill. The amendments in this section and in sections 5, 6, 7 and 10, would apply to the existing program if the Court upholds it and also to the "prospective accumulation" alternative in sections 2 and 3 if those sections take effect.

Section 5. This section would amend existing law by adding a provision for maintaining current information about children for verifying prior year claims similar to AS 43.23.025 (c) and (d) in section 1 of the bill.

Section 6. This section amends existing law to include in the formula for determining the value of each dividend for the year an estimate of the number of that year's dividends that children will later be able to claim as prior year dividends. Like AS 43.23.035, this provision allows the department to set aside in the current year the money that will be needed in later years to pay prior year dividend claims.

Section 7. These provisions also amend existing law and are similar to the provisions of AS 43.23.055(c) and (d) in section 1 of the bill, relating to setting aside and maintaining sufficient money in the fund to pay prior year claims. Because

money was not set aside for children for the 1979, 1980 and 1981 dividend years, this section provides that the periodic adjustments to the fund will begin earlier -- in 1985 rather than 1987 as is the case in AS 43.23.055(d). In this way, necessary adjustments can begin early to insure that the fund will have "caught up" by the time all of the prior year liabilities for 1979, 1980 and 1981 dividends must eventually be paid.

Section 8. This section would go into effect and govern the 1982 distribution only if the U.S. Supreme Court holds the existing program invalid. It would apply to 1982 distribution only, and would govern the 1982 distribution regardless of which of the two alternative contingency programs ultimately went into effect. The 1982 distribution under this section provides for a per capita distribution. The value of each payment for 1982 would be \$1000. The eligibility requirements would be the same as those under the on-going per capita alternative in section 1 of the bill. (Although an individual must be an adult to receive payment during 1982, children would later be able to claim the \$1000 as a prior year dividend under either of the contingent alternative programs in the bill.) The section provides that the applications now being filed with the department this year under the existing program will be the applications under this section. Finally, because it is contemplated that we will receive a ruling from the Court before the amount of income from the permanent fund for FY 82 can be determined, this section provides that one-half of FY 82

income will not be distributed this year, but will be added to FY 83 earnings and distributed during 1983.

Section 9. This section repeals the non-severability provision of the original act. Because the alternative provided in sections 2 and 3 of the bill contemplates that the existing provisions will remain in effect, it is important that those provisions be severable from the provision providing for dividend accumulation back to 1959.

Section 10. Section 10 repeals AS 43.23.050(c). This provision of existing law permits the legislature to make loans from the general fund to the dividend fund in order to insure that a dividend will be worth at least \$50. It also requires that those loans be paid back to the general fund. The effect of repealing this subsection is twofold. First, dividend distribution under the existing program and under the "prospective accumulation" alternative would, in the future, be restricted to one-half of the earnings of the permanent fund. Second, any outstanding loans from the general fund previously made would be forgiven.

Section 11. This section repeals the existing statutes that govern permanent fund dividend distribution. Included in the repeal are all amendments to the existing statutes that are part of this bill. This section is a companion to section 1 of the bill establishing a per capita distribution program, and would go into effect only if section 1 goes into effect.

Section 12. This section clarifies the legislature's intent with respect to severability under the existing law. Under this section, the only provision of the existing law that would be struck down in the event of an unfavorable ruling would be the language specifying the 1959 date.

Section 13. Section 13 is intended to apply to claims for prior year dividends filed during 1983 under the existing program. Under AS 43.23.014(c), in section 5 of the bill, individuals must file claims for prior years' dividends within one year after reaching 18 years of age. If this one year limitation were applied during 1983, persons who turned 18 more than one year before the 1983 application deadline would not be able to claim their prior dividends for 1979, 1980, or 1981. This section provides for an exception to the one year limitation, and extends the time for filing claims for prior year dividends for 1979, 1980, and 1981, until the end of the 1983 application period.

Section 14. This is an effective date provision for sections 2 and 3, establishing the prospective cumulative dividend program. Those sections would take effect 60 days after the date of an unfavorable U.S. Supreme Court decision, but only if the Court held that the existing program would be constitutional if dividends were accumulated on a prospective basis.

Section 15. This is an effective date provision for sections 1 and 11, which establish the per capita distribution program. Under this section, the per capita program,

and repeal of the existing program, would take effect 60 days after an unfavorable decision by the U.S. Supreme Court in which the Court held the program unconstitutional because dividends are accumulated on the basis of years of residency, regardless of whether those years are counted prospectively, or are counted retrospectively back to statehood.

Section 16. This is an effective date provision governing the sections of the bill that amend existing provisions of AS 43.23. Under this provision, those amendments would take effect immediately.

Section 17. Under this section the 1982 dividend distribution provided for in section 8 of the bill would take effect on the date that the U.S. Supreme Court decides that the existing program is invalid for any reason.

FINANCE

*Becky*

This is the engrossed copy of CSSB 842(Fin) am.

To save time, etc. Senate waived engrossment  
was waived in Senate. Please return the  
Unengrossed copy to edith

edith

4/16/82

Original sponsor: Rules/Governor

Offered: 4/12/82  
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 842 (Finance) am  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 TWELFTH LEGISLATURE -- SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for permanent fund dividends; and  
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 43.23 is amended by adding new sections to read:

10 Sec. 43.23.005. ELIGIBILITY. (a) An individual is eligible to  
11 receive one permanent fund dividend each year in an amount to be deter-  
12 mined under AS 43.23.035 if he applies to the department, and if on the  
13 date of application the individual

14 (1) is at least 18 years of age;

15 (2) is a state resident; and

16 (3) has been a state resident for a period of at least twelve  
17 consecutive months immediately preceding the date of application.

18 (b) In determining the minimum period of an individual's residency  
19 required under (a)(3) of this section, the department may include months  
20 of residency both in the current year and in the immediately preceding  
21 year.

22 Sec. 43.23.015. PERMANENT FUND DIVIDENDS FOR PRIOR YEARS. (a)  
23 Beginning with application for the 1983 permanent fund dividend and for  
24 each year after that, an individual who becomes 18 years of age on or  
25 before the last day for filing an application during a year may file a  
26 claim for and receive permanent fund dividends for all prior years  
27 beginning on or after January 1, 1982, in which he would have been  
28 eligible under AS 43.23.005 if he had then been 18 years of age.

29 (b) A claim for permanent fund dividends for prior years under

1 this section may be filed even if the individual is not a state resident  
2 at the time the claim is filed.

3 (c) In order to receive a permanent fund dividend for a prior  
4 year, an individual must file a claim for all prior dividends within one  
5 year after reaching the age of 18 and within the time limits established  
6 under AS 43.23.065(2) for the current year's application. Failure to  
7 file a claim for permanent fund dividends for prior years within this  
8 period waives all entitlement to those dividends. The department shall  
9 prescribe and make available forms for claims for permanent fund divi-  
10 dends for prior years, and may require proof of eligibility in addition  
11 to that required for a current year under AS 43.23.025(a).

12 (d) The value of a permanent fund dividend for a prior year is the  
13 value published by the commissioner under AS 43.23.035 for that prior  
14 year. Interest on permanent fund dividends paid for a prior year under  
15 this section is computed and paid from January 1 following the year for  
16 which the individual is entitled to a prior year dividend, using the  
17 average rate of return earned since that time by the dividend fund  
18 established in AS 43.23.055.

19 (e) Nothing in this section prevents an individual from claiming  
20 and receiving a permanent fund dividend under AS 43.23.005 for the  
21 current year for which he is eligible.

22 Sec. 43.23.025. PROOF OF ELIGIBILITY. (a) The commissioner shall  
23 adopt regulations under the Administrative Procedure Act (AS 44.62) for  
24 determining the eligibility of individuals for permanent fund dividends.  
25 The commissioner may require an individual to provide proof of eligibil-  
26 ity, and he may use other information available to him from other state  
27 departments or agencies to determine the eligibility of an individual.

28 (b) The department shall prescribe and furnish an application form  
29 for claiming a permanent fund dividend. The application must contain a

1 statement of eligibility and a certification of residency in substan-  
2 tially the following form:

3 I certify that I am a state resident on the date of  
4 this application and that I have been a state resident  
5 for at least twelve months immediately preceding the date  
6 of this application. I also understand that a false  
7 claim of residency to obtain a permanent fund dividend  
8 is a criminal offense and that if convicted I will for-  
9 feit all permanent fund dividends and that I must repay  
10 all permanent fund dividends that have been paid to me.  
11 I understand that this penalty is in addition to any  
12 criminal penalties imposed.

13 \_\_\_\_\_  
14 (signature of individual)

15 (c) Beginning with application for the 1983 permanent fund divi-  
16 dend and for each year after that, an individual who is a parent or legal  
17 guardian of a minor child who is a resident of the state shall provide to  
18 the department the following information with respect to each minor child:

19 (1) full name;  
20 (2) date of birth;  
21 (3) current address if different from the parent's or  
22 guardian's address; and

23 (4) other information required by the department relating to  
24 the future eligibility of the child to claim a prior year permanent fund  
25 dividend under AS 43.23.015.

26 (d) The department shall maintain a record of the information  
27 provided under (c) of this section for each minor child until the time  
28 for that child to file a claim for prior year permanent fund dividends  
29 has expired. The information required in (c) of this section may be

1 used only to estimate the number of future claims for prior year perma-  
2 nent fund dividends and to verify the eligibility of individuals who  
3 have filed claims for prior year permanent fund dividends. This infor-  
4 mation may be used in place of other proof of eligibility permitted  
5 under (a) of this section and under AS 43.23.015(c). The failure of a  
6 parent or guardian to provide the information required by (c) of this  
7 section does not affect the child's eligibility in the future to receive  
8 payment for a prior year permanent fund dividend.

9 Sec. 43.23.035. AMOUNT OF DIVIDEND. By September 1 of each year  
10 the commissioner shall give public notice of the value of each permanent  
11 fund dividend for that year. The commissioner shall determine the value  
12 of a permanent fund dividend by

13 (1) determining the amount of income of the Alaska permanent  
14 fund transferred to the dividend fund under AS 43.23.055(b) during the  
15 current year;

16 (2) determining the number of individuals eligible to receive  
17 a dividend payment for the current year plus an estimate of the number  
18 of individuals under 18 years of age who will be eligible in the future  
19 to claim a dividend for the current year as a prior year dividend under  
20 AS 43.23.015; and

21 (3) dividing the amount determined in (1) of this section by  
22 the amount determined in (2) of this section.

23 Sec. 43.23.045. PENALTIES AND ENFORCEMENT. (a) In addition to  
24 any criminal penalties imposed by state law, if an individual is con-  
25 victed of a crime in connection with a false statement made in a certi-  
26 fication required under AS 43.23.025, and the conviction is not reversed  
27 that individual forfeits all permanent fund dividends paid to him and is  
28 not eligible for a future permanent fund dividend.

29 (b) If the commissioner determines that a permanent fund dividend

11 should not have been claimed by or paid to an individual, he may use all  
12 collection procedures or remedies available for collection of taxes  
13 under this title to recover the payment of a permanent fund dividend  
14 that was improperly made. A notice of an improperly paid dividend must  
15 be sent to the individual within 10 years after the improper payment.  
16 If notice is not sent within the 10-year period, proceedings may not be  
17 commenced in court for recovery of the improper payment.

18 Sec. 43.23.055. DIVIDEND FUND. (a) The dividend fund is estab-  
19 lished as a separate fund in the state treasury. The dividend fund  
20 shall be administered by the commissioner and shall be invested by the  
21 commissioner in the same manner as provided in AS 37.10.070.

22 (b) Each year the commissioner shall transfer to the dividend fund  
23 50 percent of the income of the Alaska permanent fund earned during the  
24 fiscal year ending on June 30 of the current year and available for  
25 distribution under AS 37.13.130.

26 (c) Each year the department shall pay from the dividend fund all  
27 permanent fund dividends payable to eligible individuals for the current  
28 year and all permanent fund dividends for prior years, including inter-  
29 est, payable that year to eligible individuals. The money remaining  
each year after these payments are made, and any interest earned from  
investment of money in the dividend fund, remains in the dividend fund  
to pay future claims for prior year permanent fund dividends.

(d) The department shall review the status of the dividend fund  
every four years beginning in 1987 to determine whether there is suffi-  
cient money in the fund to pay future claims for prior year permanent  
fund dividends. On August 1 of the year of a review the commissioner  
shall certify the amount of excess or the deficiency of money, as the  
case may be. If there is an excess, the amount of income described in  
AS 43.23.035(1) shall be increased by the amount of the excess for

1 purposes of determining the value of a permanent fund dividend for that  
2 year under AS 43.23.035. If there is a deficiency, the amount of income  
3 described in AS 43.23.035(1) shall be reduced by the amount of the  
4 deficiency for purposes of determining the value of a permanent fund  
5 dividend for that year under AS 43.23.035.

6 (e) The department may adopt by regulation a plan that, to the  
7 extent permitted by federal law, will allow an individual who elects to  
8 participate in the plan to select an optional disbursement of the divi-  
9 dend payment that would have the effect of deferring payment of all or a  
10 portion of federal income taxes on the receipt of a permanent fund  
11 dividend.

12 Sec. 43.23.065. DUTIES OF THE DEPARTMENT. The department shall

13 (1) annually pay permanent fund dividends from the dividend  
14 fund;

15 (2) adopt regulations under the Administrative Procedure Act  
16 (AS 44.62) that establish procedures and time limits for claiming a  
17 permanent fund dividend; the department shall set the time limit for  
18 applications for permanent fund dividends so that the number of eligible  
19 applicants is determined by September 1 and permanent fund dividends for  
20 a year are paid before December 31 of that year, and

21 (3) assist residents of the state, particularly in rural  
22 areas, who because of language, illness, old age, or inaccessibility to  
23 public transportation need assistance to establish eligibility and to  
24 apply for permanent fund dividends.

25 Sec. 43.23.075. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty  
26 percent of the annual permanent fund dividend payable to an individual  
27 is exempt from levy, execution, garnishment, attachment, or any other  
28 remedy for the collection of debt. This exemption applies to an eligible  
29 individual's permanent fund dividend both before and after payment is

1 made to the individual and applies even if the dividend payment is  
2 commingled with other money of the individual. The exemption under this  
3 section does not apply to obligations for child support.

4 Sec. 43.23.085. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In  
5 determining the eligibility of an individual under a public assistance  
6 program administered by the Department of Health and Social Services in  
7 which eligibility for assistance is based on financial need, the Depart-  
8 ment of Health and Social Services may not consider a permanent fund  
9 dividend as income or resources for the month the dividend was received  
10 by the recipient of public assistance unless required to do so by  
11 federal law or regulation. The Department of Health and Social Services  
12 shall notify all recipients of public assistance of the effects of  
13 receiving a permanent fund dividend.

14 (b) An individual who is denied medical assistance under Title  
15 XIX of the federal Social Security Act (42 U.S.C. 1396 et seq) solely  
16 because of the receipt of a permanent fund dividend is eligible for  
17 state-funded medical assistance under the general relief assistance  
18 program (AS 47.25.120 - 47.25.300). The individual shall receive the  
19 same level of medical assistance as the individual would have received  
20 under Title XIX of the federal Social Security Act had there been no  
21 permanent fund dividend program.

22 (c) An individual who is denied assistance because permanent  
23 fund dividends are counted as income or resources under federal law or  
24 regulation is eligible for cash assistance under the general relief  
25 assistance program (AS 47.25.120 - 47.25.300). Notwithstanding the  
26 limit in AS 47.25.130, the individual shall receive the same amount as  
27 the individual would have received under other public assistance pro-  
28 grams had there been no permanent fund dividend program.

29 Sec. 43.23.086. ELIGIBILITY FOR STATE PROGRAMS. No program

1 administered by the state or any of its instrumentalities or municipal-  
2 ities, the eligibility for which is based on financial need, shall  
3 consider a permanent fund dividend as income or resources unless re-  
4 quired to do so by federal law or regulation.

5 Sec. 43.23.095. DEFINITIONS. In this chapter,

6 (1) "Alaska permanent fund" means the fund established by  
7 art. IX, sec. 15 of the state constitution;

8 (2) "commissioner" means the commissioner of revenue;

9 (3) "department" means the Department of Revenue;

10 (4) "dividend fund" means the fund established by AS 43.-  
11 23.055;

12 (5) "individual" means a natural person;

13 (6) "permanent fund dividend" means a right to receive a  
14 payment from the dividend fund;

15 (7) "state resident" means an individual who is physically  
16 present in the state with the intent to remain permanently in the state  
17 or, if he is not physically present in the state, intends to return to  
18 the state and is absent only for any of the following reasons:

19 (A) vocational, professional, or other specific educa-  
20 tion for which a comparable program was not reasonably available in  
21 the state;

22 (B) secondary or postsecondary education;

23 (C) military service;

24 (D) medical treatment;

25 (E) service in Congress; or

26 (F) other reasons which the commissioner may establish  
27 by regulation;

28 (8) "year" means a calendar year.

29 \* Sec. 2. AS 43.23.010(a) is amended to read:

1 (a) An individual who is eligible under (b) of this section is  
2 entitled to one permanent fund dividend for each full year that the  
3 individual is a state resident after January 1, 1982 [1959].

4 \* Sec. 3. AS 43.23.020(b)(1) is amended to read:

5 (1) a statement of eligibility and a certification of resi-  
6 dency in substantially the following form:

7 I certify that I am a state resident on the date of  
8 this application and I have been a state resident for  
9 \_\_\_\_\_ full years and that I understand that my claim  
10 for a permanent fund dividend is determined by the  
11 length of my residence in the state after January 1,  
12 1982 [1959]. I also understand that a false claim of  
13 residency to obtain a permanent fund dividend is a  
14 criminal offense and that if convicted I will forfeit  
15 all permanent fund dividends and that I must repay  
16 all permanent fund dividends which have been paid to  
17 me. I understand that this penalty is in addition  
18 to any criminal penalties imposed.

19 \_\_\_\_\_  
20 (signature of individual)

21 and

22 \* Sec. 4. AS 43.23 is amended by adding a new section to read:

23 Sec. 43.23.014. PAYMENTS FOR PRIOR YEARS. (a) Beginning with  
24 application for permanent fund dividends filed during 1983 and for each  
25 year after that, an individual who becomes 18 years of age on or before  
26 the last day for filing an application during a year may file a claim  
27 for and receive permanent fund dividends for all prior years in which he  
28 would have been eligible under AS 43.23.010 if he had then been 18 years  
29 of age.

1 (b) A claim for permanent fund dividends for prior years under  
2 this section may be filed even if the individual is not a state resident  
3 at the time he makes the claim.

4 (c) In order to receive a permanent fund dividend for a prior  
5 year, an individual must file a claim for all prior dividends within one  
6 year after reaching the age of 18 and within the time limits established  
7 under AS 43.23.060(2) for the current year's application. Failure to  
8 file a claim for permanent fund dividends for prior years within this  
9 period waives all entitlement to those dividends. The department shall  
10 prescribe and make available forms for claims for permanent fund divi-  
11 dends for prior years, and may require proof of eligibility in addition  
12 to that required for a current year under AS 43.23.020(a).

13 (d) The value of a permanent fund dividend for a prior year is the  
14 value published by the commissioner under AS 43.23.030 for that prior  
15 year. Interest on permanent fund dividends paid for a prior year under  
16 this section is computed and paid from January 1 of the year following  
17 that year, using the average rate of return earned since that time by  
18 the dividend fund established in AS 43.23.050.

19 (e) Nothing in this section prevents an individual from claiming  
20 and receiving a permanent fund dividend under AS 43.23.010 during the  
21 current year in which he is eligible.

22 \* Sec. 5. AS 43.23.020 is amended by adding new subsections to read:

23 (c) Beginning with application for a permanent fund dividend filed  
24 during 1983 and each year after that, an individual who is a parent or  
25 legal guardian of a minor child who is a resident of the state, shall  
26 provide to the department the following information with respect to each  
27 minor child:

28 (1) full name;

29 (2) date of birth;

1 (3) current address if different from the parent or guardian's  
2 address; and

3 (4) other information required by the department relating to  
4 th; future eligibility of the child to claim a prior year permanent fund  
5 dividend.

6 (d) The department shall maintain a record of the information  
7 provided under (c) of this section for each minor child until the time  
8 for that child to file a claim for prior year permanent fund dividends  
9 has expired. The information required in (c) of this section may be  
10 used only to estimate the number of future claims for prior year divi-  
11 dends and to verify the eligibility of individuals who have filed claims  
12 for prior year dividends. This information may be used in place of  
13 other proof of eligibility permitted under (a) of this section and under  
14 AS 43.23.014(c). The failure of a parent or guardian to provide the  
15 information required by (c) of this section does not affect the child's  
16 eligibility in the future to receive payment for a prior year dividend.

17 \* Sec. 6. AS 43.23.030(2) is amended to read:

18 (2) determining the number of permanent fund dividends paid  
19 during the current year plus an estimate of the number of dividends for  
20 that year which individuals under 18 years of age will be eligible in  
21 the future to claim as dividends for a prior year under AS 43.23.014;  
22 and

23 \* Sec. 7. AS 43.23.050 is amended by adding new subsections to read:

24 (d) Each year the department shall pay from the dividend fund all  
25 permanent fund dividends payable to eligible individuals for the current  
26 year and all permanent fund dividends for prior years, including inter-  
27 est. payable that year to eligible individuals. The money remaining  
28 each year after these payments are made, and any interest earned from  
29 investment of money in the dividend fund, remains in the fund to pay

1 claims for prior year permanent fund dividends.

2 (e) The department shall review the status of the fund every four  
3 years beginning in 1985 to determine whether there is sufficient money  
4 in the fund to pay future claims for prior year permanent fund divi-  
5 dends. On August 1 of the year of a review the commissioner shall  
6 certify the amount of excess or deficient funds, as the case may be. If  
7 there is an excess, the amount of income described in AS 43.23.030(1)  
8 shall be increased by the amount of the excess for purposes of deter-  
9 mining the value of a permanent fund dividend under AS 43.23.030 to be  
10 paid in the following year. If there is a deficiency, the amount of  
11 income described in AS 43.23.030(1) shall be reduced by the amount of  
12 the deficiency for purposes of determining the value of a permanent fund  
13 dividend under AS 43.23.030 to be paid in the following year.

14 \* Sec. 8. AS 43.23.070 is amended by adding a new subsection to read:

15 (d) No exemption is available under this section for permanent  
16 fund dividends taken to satisfy child support obligations required by  
17 court order.

18 \* Sec. 9. AS 43.23.080 is repealed and reenacted to read:

19 Sec. 43.23.080. ELIGIBILITY FOR STATE PROGRAMS. No program admin-  
20 istered by the state or any of its instrumentalities or municipalities,  
21 the eligibility for which is based on financial need, shall consider a  
22 permanent fund dividend as income or resources unless required to do so  
23 by federal law or regulation.

24 \* Sec. 10. AS 43.23 is amended by adding a new section to read:

25 Sec. 43.23.087. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In  
26 determining the eligibility of an individual under a public assistance  
27 program administered by the Department of Health and Social Services  
28 and in which eligibility for assistance is based on financial need,  
29 the Department of Health and Social Services may not consider a

1 permanent fund dividend as income or resources for the month the divi-  
2 dend was received by the recipient of public assistance unless required  
3 to do so by federal law or regulation. The Department of Health and  
4 Social Services shall notify all recipients of public assistance of the  
5 effects of receiving a permanent fund dividend.

6 (b) An individual who is denied medical assistance under Title  
7 XIX of the federal Social Security Act (42 U.S.C. 1396 et seq) solely  
8 because of the receipt of a permanent fund dividend is eligible for  
9 state-funded medical assistance under the general relief assistance  
10 program (AS 47.25.120 - 47.25.300). The individual shall receive the  
11 same level of medical assistance as the individual would have received  
12 under Title XIX of the federal Social Security Act had there been no  
13 permanent fund dividend program.

14 (c) An individual who is denied assistance because permanent  
15 fund dividends are counted as income or resources under federal law or  
16 regulation is eligible for cash assistance under the general relief  
17 assistance program (AS 47.25.120 - 47.25.300). Notwithstanding the  
18 limit in AS 47.25.130, the individual shall receive the same amount as  
19 the individual would have received under other public assistance  
20 programs had there been no permanent fund dividend program.

21 \* Sec. 11. 1982 PERMANENT FUND DIVIDEND DISTRIBUTION. (a) This section  
22 applies to the distribution of permanent fund dividends under AS 43.23 during  
23 1982 only. The provisions of this section relating to the value of a perma-  
24 nent fund dividend, eligibility requirements, application procedures, and  
25 time limits apply to the distribution of permanent fund dividends during 1982,  
26 notwithstanding any contrary provisions of AS 43.23 that are in effect on the  
27 effective date of this section or that take effect after the effective date  
28 of this section. All other provisions of AS 43.23 in effect on the effective  
29 date of this section apply to the distribution of permanent fund dividends

1 under this section.

2 (b) An individual is eligible to receive one permanent fund dividend in  
3 1982 if he applies to the department, and if on the date of application the  
4 individual

5 (1) is at least 18 years of age;

6 (2) is a state resident; and

7 (3) has been a state resident for a period of at least six con-  
8 secutive months immediately preceding the date of application.

9 (c) In determining the minimum period of an individual's residency  
10 required under (b)(3) of this section, the department may include months of  
11 residency both in 1982 and in 1981.

12 (d) The amount of each dividend for 1982 is \$1,000.

13 (e) An individual meets the requirement of applying to the department  
14 under (b) of this section if the individual

15 (1) before the effective date of this section and during 1982  
16 filed an application with the department under AS 43.23.010; or

17 (2) files an application with the department under this section  
18 within the time limits established by the department in regulations adopted  
19 under (g) of this section.

20 (f) As soon as possible after the effective date of this section, the  
21 department shall issue warrants for permanent fund dividends to eligible  
22 individuals. The department shall make application forms available and may  
23 continue to use the application forms prepared under AS 43.23.020(b) for  
24 applications under this section.

25 (g) The department may adopt regulations to govern the 1982 dividend  
26 distribution as emergency regulations under AS 44.62.250.

27 (h) The income of the Alaska permanent fund for fiscal year 1982 trans-  
28 ferred to the dividend fund may not be used for payment of dividends during  
29 1982, but must remain in the dividend fund and be used for payment of

1 permanent fund dividends during 1983 along with the fiscal year 1983 earnings  
2 of the Alaska permanent fund transferred to the dividend fund.

3 (i) In this section, "department" means the Department of Revenue.

4 \* Sec. 12. Section 4, ch. 21, SLA 1980, is repealed.

5 \* Sec. 13. AS 43.23.050(c) is repealed.

6 \* Sec. 14. AS 43.23.010, 43.23.014, 43.23.020, 43.23.030, 43.23.040,  
7 43.23.050, 43.23.060, 43.23.070, 43.23.080, 43.23.090, and 43.23.100 are re-  
8 pealed.

9 \* Sec. 15. If the United States Supreme Court decides that AS 43.23.010(a)  
10 is invalid on the basis of the date specified in that subsection, then the  
11 language specifying that date is severable, and all other provisions of  
12 AS 43.23, as enacted in ch. 21, SLA 1980, remain in effect.

13 \* Sec. 16. Notwithstanding the provisions of AS 43.23.014(c), enacted in  
14 sec. 4 of this Act, which require an individual to file an application for  
15 prior year permanent fund dividends within one year after reaching 18 years  
16 of age, an individual may file a claim during 1983 for permanent fund divi-  
17 dends for all prior years for which he is eligible if that individual has  
18 turned 18 years of age on or before the last day for filing an application  
19 during 1983.

20 \* Sec. 17. Sections 2 and 3 of this Act take effect 60 days after the  
21 date that the United States Supreme Court decides that AS 43.23.010 is  
22 invalid but also decides that AS 43.23.010 would not violate the United  
23 States Constitution if the amount of a permanent fund dividend were deter-  
24 mined by accumulated years of residency in the state beginning on or after  
25 January 1, 1979.

26 \* Sec. 18. Sections 1 and 14 of this Act take effect 60 days after the  
27 date that the United States Supreme Court decides that AS 43.23.010 is  
28 invalid because the amount of a permanent fund dividend is determined by  
29 accumulated years of residency in the state whether those years are counted

1 before or after January 1, 1979.

2 \* Sec. 19. Sections 4 - 7, 12, 13, 15, and 16 of this Act take effect  
3 immediately in accordance with AS 01.10.070(c).

4 \* Sec. 20. Section 11 of this Act takes effect on the date that the United  
5 States Supreme Court decides that AS 43.23.010 is for any reason invalid.

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THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE INCREASE

I. REQUEST

Bill/Resolution Number: CSSB842(Fin)am

Title: An Act providing for Permanent Fund Dividends.

Requested by: House Finance Committee Date: May 8, 1982

II. FISCAL DETAIL

Agency Affected: Department of Revenue

Program Category Affected: General Government

BRU, Program, or Subprogram(s) Affected: Administrative & Public Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	58.9	18.9	20.2	21.6	23.1
200 TRAVEL	-	40.0	-	-	-	-
300 CONTRACTUAL	-	241.0	146.0	156.2	167.2	178.9
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	339.9	164.9	176.4	188.8	202.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-	339.9	164.9	176.4	188.8	202.0
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS


	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-	-	-	-	-	-
PART TIME	-	10/30mm	3/9mm	3/9mm	3/9mm	3/9mm
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

An amendment to this bill which adds payments to minors upon application of parent or guardian would add 147,000 applications, related processing activities and payments. Forms preparation and distribution, assistance in applying, processing of applications and dividend payment activity is involved.

Expenditure detail is attached. Inflation for FY 84 and following years is estimated at seven percent.

IV. DATE: May 8, 1982

PREPARED BY:  P.A. Wall

AGENCY: Revenue

PHONE: 465-2393

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

May 8, 1982

The Honorable Al Adams, Chairman  
House Finance Committee  
Alaska House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Re: CSSB842(Fin)am

Dear Mr. Adams:

It is my understanding that your committee is considering several amendments to CSSB842(Fin)am which provides for permanent fund dividends. I wish to comment on three proposed amendments which have been indicated to members of my staff:

1. Section 1, line 16, page 1, regarding a period of state residency would be changed from 12 to 6 months.

This amendment will not change the fiscal notes which were submitted to your committee on April 19, 1982.

2. An amendment would add a repeal of the present law, AS 43.23, late in calendar 1982, should the United States Supreme Court fail to rule on the appeal which it is presently considering.

This amendment will not change the fiscal notes which were submitted to your committee on April 19, 1982.

3. An amendment would allow the parents or guardians of minor and incompetent individuals who are eligible to claim the dividends for those minor or incompetent individuals.

This amendment will increase expenditures beginning with FY 83 because of forms preparation, distribution, assistance in preparing and processing applications, and dividend payment activities for 147,000 additional individuals. Expenditures which should be added to our fiscal notes for FY 83 are defined in the attached Fiscal Note Increase for CSSB842(Fin)am.

Sincerely,



Thomas K. Williams  
Commissioner of Revenue

TKW:PAW:jas

Attachments

CSSB842(Fin)am

Positions:

Administrative Services

3 PPT Tax Scanners R8 @ \$1,487 mo  
plus 32% costs for 3 months = 17.7

Provide for 147,000 minor and incompetent applications, batch control, correction, dividend payment release, data capture, mail opening and distribution, document control, numbering and batching.

Public Services

7 PPT Tax Scanners R8 @ \$1,487 mo.  
plus 32% costs for 3 months = 41.2

Additional FY 83 Positions = 58.9

Other Expenditures:

Travel - Public Services

For urban and rural assistance = 40.0

Additional FY 83 Travel = 40.0

Contractual - Administrative Services:

Toll calls involving Zenith

Administrative Services = 2.0

Forms and Instructions:

Administrative Services - 200,000 for  
handout and response to requests due  
to minors being eligible @\$13m = 2.6

Warrant stock: 147,000 @ \$35m = 5.1

Warrant envelopes: 147,000 @\$12.43m = 1.8

Postage:

Administrative Services:

Payments - 147,000 @ .20 = 29.4

Forms 100,000 @ .20 = 20.0

Data Processing (Includes development,  
data capture and production):

Computer Resource Units: 40,000  
@ 1.25 per unit = 50.0

Common output units: 130 @ \$31  
(reports, warrants, COM) = 4.0

Storage units: master and distribution  
file: 1,600 @ \$14 = 22.4

Terminals:

Data capture CRT's: 2@ \$3,900 each = 7.8

Contractual - Public Services:

Toll calls including Zenith = 7.0

Postage

Correspondence, 15,000 @ .20 = 3.0

Contracts

For rural application assistance = 70.0

Advertising

Radio, TV, newspaper = 15.0

Additional FY 83 Contractual = 241.0

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE INCREASE

I. REQUEST

Bill/Resolution Number: CSSB842(Fin)am

Title: An Act providing for permanent fund dividends.

Requested by: House Finance Committee Date: May 8, 1982

II. FISCAL DETAIL

Agency Affected: Department of Revenue

Program Category Affected: General Government

BRU, Program, or Subprogram(s) Affected: Enforcement

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	88.8	142.5	152.5	163.2	174.6
200 TRAVEL	-	5.0	8.0	8.6	9.2	9.8
300 CONTRACTUAL	-	14.0	17.3	18.5	19.8	21.2
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	3.6	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	111.4	167.8	179.6	192.2	205.6

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-	111.4	167.8	179.6	192.2	205.6
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-	4/32mm	4/48mm	4/48mm	4/48mm	4/48mm
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The addition of minors will result in 147,000 more applications and payments than were considered in the original bill. Determining the eligibility of minors who are not yet in school, who have not received a social security number, and who are involved in name changes will be the most difficult.

Expenditure detail is attached.

IV. DATE: May 8, 1982

PREPARED BY: for Marilla Gemmer

AGENCY: Revenue

PHONE: 465-2366

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

CSSB842(Fin)am

<u>Postions:</u>	<u>FY 83</u>	<u>FY 84</u>
1 PFT REO III, R17	27.9	44.7
2 PFT Eligibility Tech II, R14	45.2	72.6
1 PFT Clerk Typist IV, R8	<u>15.7</u>	<u>25.2</u>
	88.8	142.5
 <u>Travel:</u>	 <u>5.0</u>	 <u>8.0</u>
	5.0	8.0
 Contractual		
Two CRT's	9.3	9.3
Space	3.2	5.0
Phone, postage, misc.	<u>1.5</u>	<u>3.0</u>
	14.0	17.3
 Equipment for 4 new positions	 <u>3.6</u>	
	3.6	

COMMITTEE REPORT  
SENATE

4/1/82

FURTHER: None

Date: 4/13/82

Mr. President:

The Committee on FINANCE has had SB 843  
surface coal mining

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SB 843 (old)  same title  
 new title
- and recommends no recommendation
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

[Signature]

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]

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[Signature]

CHAIRMAN

Leg Fin  
 HB 762  
 SB 843

THE LEGISLATURE OF THE STATE OF ALASKA  
 TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. \_\_\_\_\_  
 Title Alaska Surface Coal Mining Control and Reclamation Act  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Natural Resources  
 Program Category Affected Management of Mineral Resources  
 BRU, Program, Or Subprogram(s) Affected Mineral Development  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		157.1	157.1	200.2	200.2	200.2
200 TRAVEL		19.8	20.9	42.1	49.5	54.5
300 CONTRACTUAL		375.0	490.3	393.3	428.7	467.3
400 COMMODITIES		1.0	1.1	1.5	1.6	1.8
500 EQUIPMENT		13.0	10.0	3.8	3.0	3.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>565.9</b>	<b>679.4</b>	<b>642.3</b>	<b>684.4</b>	<b>728.2</b>

FUNDING (Thousands of Dollars)

GENERAL FUND		161.9	200.0	190.7	202.6	213.0
FEDERAL FUNDS		402.0	477.6	449.6	479.8	513.2
OTHER (Specify Source)						

POSITIONS

FULL TIME		4	4	5	5	5
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

See Attachment

IV. DATE 2/8/82 PREPARED BY Jeff Haynes  
 AGENCY Natural Resources  
 PHONE 465-2400  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

### III. ANALYSIS

This note assumes that a regulatory program is approved by the Secretary of the Interior and becomes effective on 12-31-82.

#### A. Personal Services

The program will require 4 positions at its inception: Geologist IV, Env. Engineer III, Land Management Officer II and Clerk-Typist III. An additional Scientist/Engineer II position is projected for FY 85 and beyond due to additional coal operations projected in the state at that time.

The Geologist will be the manager of the surface mining regulatory program. He will supervise contracts for review of permit applications, abandoned mine lands work, small operator assistance, etc.; make initial departmental decisions or recommendations on permit applications, bond release, enforcement actions, petitions to designate lands unsuitable, etc. The Env. Engineer will be the primary inspector under the program, as well as assisting and complementing the Geologist in the tasks enumerated above. When additional operations come on line (projected in FY 85), an additional engineer/scientist will be required to meet the inspection workload. The duties of the Land Management Officer will focus on compliance with public notice and public participation requirements, record keeping, and general review and response regarding different new responsibilities of the Department under this program (i.e., reviewing exploration permits and/or notice of intent). The Clerk-Typist will provide secretarial support.

#### B. Travel

The travel budget is composed largely of field inspections and field visits to coal development sites. Other travel funds would be spent on required meetings with operators and members of the public and other agency officials, and public hearings. There would also be investigation of potential abandoned mine reclamation and small operator assistance sites.

#### C. Contractual

The contractual category includes the abandoned mine land program development and projects (all federally-funded), small operator assistance laboratory work (all federally-funded), review of permit applications, laboratory work for inspections, legal counsel, and review of any petitions for designation of lands unsuitable for surface coal mining. Much of this work is speculative as it is based on projections about future development of the program.

#### D. Funding Sources

The federal government funds 50% of the basic cost of the state regulatory program. All small operator assistance contracts and abandoned mine land work are 100% federally funded. Funds in this category represent the return to the state of a portion of the 35¢ per ton reclamation fee levied against operators by the federal government. Substantially more funds should be available in this category after production begins on new coal operations. In addition, 100% federal funding is available to defray the costs of regulating any surface coal mining operation on federal lands. One of the projected future operations would qualify under this funding category.

April 9, 1982

Proposed ALASKA SURFACE COAL MINING CONTROL  
and RECLAMATION ACT

Section-by-Section Analysis

CS Senate Bill No. 843

Section 1 of the bill enacts a new AS 41.45 entitled "Alaska Surface Coal Mining Control and Reclamation Act", consisting of the following sections:

AS 41.45.010 states the basic finding that the state is best able to regulate surface coal mining and reclamation under the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA), and lists the purposes of new AS 41.45, which include assuring responsible extraction of coal, reclamation of coal mining areas, protecting the rights of surface owners, minimizing degradation of land and water, and assuring appropriate public participation in the regulatory process.

AS 41.45.020 vests jurisdiction over surface coal mining and reclamation operations in the state in the commissioner of natural resources.

AS 41.45.030 enumerates general powers, including adoption of regulations, issuing permits, holding hearings, issuing orders, inspections, receiving funds, participating in the federal abandoned mine land program, coordination and cooperation with other agencies.

AS 41.45.090 authorizes the commissioner to set a fee schedule for permit applications, not to exceed the costs of processing the applications.

AS 41.45.100 requires public filing of permit applications and other materials, except for designated confidential information including information relating to the competitive rights of the applicant.

AS 41.45.110 requires the commissioner to adopt regulations relating to the contents of permit applications, consistent with the requirements of the federal program, but taking into account the unique mining and environmental conditions in Alaska.

AS 41.45.120 establishes small operator assistance for certain laboratory work required as part of the permit application for operations which will produce under 100,000 tons of coal annually. This is required by SMCRA, sec. 507(c) and 30 CFR 732.15(b)(13).

AS 41.45.130 provides for public notice of pending applications for surface coal mining and reclamation permits.

AS 41.45.140 allows government agencies and persons who may be adversely affected by the proposed operation to file written comments and objections to the application, and to request an informal conference with the department. The commissioner is required to issue a decision regarding the permit application within 60 days of the informal conference, or as provided in AS 42.45.180.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

April 9, 1982

Proposed ALASKA SURFACE COAL MINING CONTROL  
and RECLAMATION ACT

Section-by-Section Analysis

CS Senate Bill No. 843

Section 1 of the bill enacts a new AS 41.45 entitled "Alaska Surface Coal Mining Control and Reclamation Act", consisting of the following sections:

AS 41.45.010 states the basic finding that the state is best able to regulate surface coal mining and reclamation under the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA), and lists the purposes of new AS 41.45, which include assuring responsible extraction of coal, reclamation of coal mining areas, protecting the rights of surface owners, minimizing degradation of land and water, and assuring appropriate public participation in the regulatory process.

AS 41.45.020 vests jurisdiction over surface coal mining and reclamation operations in the state in the commissioner of natural resources.

AS 41.45.030 enumerates general powers, including adoption of regulations, issuing permits, holding hearings, issuing orders, inspections, receiving funds, participating in the federal abandoned mine land program, coordination and cooperation with other agencies.

AS 41.45.040 specifies that individual provisions of regulations or permits may vary depending on local conditions so long as the provisions are consistent with the purposes of the chapter. This flexibility is necessary to accommodate the different environmental conditions encountered in the three major geographical areas of potential or actual coal development in Alaska.

AS 41.45.050 prohibits conflicts of interest in employees and contractors who administer the new chapter and prescribes a criminal penalty for violation of this prohibition. This provision is required by SMCRA, sec. 517(g) and 30 CFR 732.15(b)(11).

AS 41.45.060 requires coal mine operators to apply for a permit to conduct surface coal mining and reclamation operations.

AS 41.45.070 sets a basic permit term of five years, unless a longer initial period is necessary to obtain financing. A permittee is required to commence operations within 3 years after the permit is issued, subject to some exceptions.

AS 41.45.080 provides that permits carry a right of successive renewal unless an opponent of renewal demonstrates that the operation is not in compliance with regulatory requirements. Renewals involving new land areas require the same procedures and standards as apply to new permit applications.

AS 41.45.090 authorizes the commissioner to set a fee schedule for permit applications, not to exceed the costs of processing the applications.

AS 41.45.100 requires public filing of permit applications and other materials, except for designated confidential information including information relating to the competitive rights of the applicant.

AS 41.45.110 requires the commissioner to adopt regulations relating to the contents of permit applications, consistent with the requirements of the federal program, but taking into account the unique mining and environmental conditions in Alaska.

AS 41.45.120 establishes small operator assistance for certain laboratory work required as part of the permit application for operations which will produce under 100,000 tons of coal annually. This is required by SMCRA, sec. 507(c) and 30 CFR 732.15(b)(13).

AS 41.45.130 provides for public notice of pending applications for surface coal mining and reclamation permits.

AS 41.45.140 allows government agencies and persons who may be adversely affected by the proposed operation to file written comments and objections to the application, and to request an informal conference with the department. The commissioner is required to issue a decision regarding the permit application within 60 days of the informal conference, or as provided in AS 42.45.180.

AS 41.45.150 provides for a formal hearing on a permit application at the request of the applicant or any person who may be adversely affected. The commissioner may grant temporary relief pending his final decision when circumstances warrant it.

AS 41.45.160 requires that, before a permit can be issued, the applicant must furnish a performance bond conditioned on faithful performance of the requirements of the chapter and the permit. The bond must be sufficient to assure completion of the applicant's reclamation plan by the department in the event of a forfeiture. In lieu of a bond, the commissioner may accept cash, a self-bond, or negotiable bonds or certificates of deposit, upon which the department must pay interest annually. The amount of the bond may be adjusted for good cause, including changes in affected land areas and costs of reclamation.

AS 41.45.170 provides for release of performance bonds at the request of a permittee after notice, inspection and evaluation of the reclamation work involved. A schedule for staged release of a bond is established, depending on work completed and the commissioner's evaluation. Government agencies and persons whose legal interests may be adversely affected may file objections to the release of bond and request a hearing, as may an applicant whose request for bond release has been denied.

AS 41.45.180 requires the commissioner to make a decision on a permit application within 120 days after receipt, which may be extended by an additional 60 days after receipt of additional information required

for a decision. This section sets out the basic criteria for approval of an application. A permit may not be issued if the applicant is in violation of environmental standards regarding surface coal mining operation in the United States or if the applicant has demonstrated a pattern of wilful violations of this chapter.

AS 41.45.190 provides for revision and transfer of permits.

AS 41.45.200 requires notice to the commissioner before commencement of coal exploration. Exploration would be governed by regulations based on the degree of disturbance and amount of coal to be removed. Coal exploration operations are required to conform to the general requirements of the surface mining program.

AS 41.45.210 requires the commissioner to propose regulations consistent with the environmental performance standards of SMCRA, with adjustments for the special conditions of Alaska. SMCRA, sec. 503(a)(7) requires consistency with these standards, which apply to all permits.

AS 41.45.220 requires regulation of the surface effects of underground coal mining in a manner similar to the regulation of surface coal mining operations. The commissioner is given the power to suspend underground coal mining activities in populated areas if there is an imminent danger to inhabitants.

AS 41.45.230 authorizes the department to inspect and monitor surface coal mining and reclamation operations. The commissioner can require various forms of reporting and monitoring by operators, and must inspect operations on an irregular basis. Although inspections occur without prior notice to the permittee, the inspector must notify the permittee's representative on the site upon his arrival and invite the representative to accompany the inspector during the inspection. The inspector is required to file an inspection report. Procedures are set out for individuals to trigger inspections and for the commissioner to review failures to inspect adequately. This section is mandated by SMCRA, sec. 517(b).

AS 41.45.240 sets out the department's basic enforcement authority. SMCRA, sec. 518(i) and 521(d) require that state programs contain sanctions that are no less stringent than those of the federal law and that state programs contain the same or similar procedural requirements. There are two basic enforcement mechanisms. A violation of the chapter or permit which causes imminent danger to public health or safety, or which threatens significant, imminent environmental harm, requires the inspector to issue a cessation order. The order remains in effect for 30 days unless an informal conference is held and further action taken. If a violation does not cause the sort of imminent danger noted above, a notice of violation is issued. Failure to comply with a notice of violation gives rise to a cessation order as well. Cessation orders and notices of violation are subject to appeals and full due process hearings for persons who may be adversely affected by them. Temporary relief is also

available. The commissioner may issue a show cause order based on a pattern of unwarranted violations of the program. The commissioner may also request the attorney general to institute a civil action for relief. All of these actions are subject to judicial review.

AS 41.45.250 provides for civil and criminal sanctions for violations of the chapter and permits. Civil penalties are mandatory for cessation orders, but discretionary for notices of violation. Wilful and knowing violations, including those of a corporate officer, are class C felonies, as is wilful interference with the department's employees. Failure to correct a violation during the period of time allowed in a notice or an extension requires a \$750 per day penalty. Operators wishing to contest a violation must either post a bond or set up an escrow to cover the amount of the proposed penalty, as required by sec. 518(c) of SMCRA.

AS 41.45.260 allows persons with an interest which may be adversely affected to petition the commissioner to designate areas as unsuitable for all or certain types of coal mining. An area must be so designated if the commissioner determines that reclamation in the area is not technologically feasible. There are also four discretionary criteria for designation of unsuitable areas, as well as an outright prohibition of mining in certain protected areas, such as near dwellings, schools, and churches. These provisions are required by SMCRA, sec. 522 and 30 CFR 732.15(b)(9).

AS 41.45.270 -- 41.45.340 contain provisions regarding abandoned mine lands, and are necessary for the state to implement a program through which it receives funds from the Federal Abandoned Mine Reclamation Fund for the reclamation of land adversely affected by past coal mining practices. After all coal lands have been reclaimed, the funds may be used for reclamation of non-coal lands and for community impact assistance in areas affected by coal mining operations.

AS 41.45 270 contains the administrative powers necessary to establish priorities, designate eligible lands, submit program elements to the Interior Department and administer funds received.

AS 41.45.280 defines eligible lands as those which were mined or affected by coal mining, left in an inadequate reclamation status, and for which there is no continuing reclamation responsibility.

AS 41.45.290 gives the department the power to enter property for reclamation purposes.

AS 41.45.300 authorizes the commissioner, under limited circumstances, to acquire abandoned mine areas for reclamation purposes, and to dispose of them.

AS 41.45.310 requires the commissioner to place a lien on property for an increase in fair market value because of the abandoned mine land reclamation efforts.

AS 41.45.320 authorizes filling voids and sealing tunnels with money from the Abandoned Mine Reclamation Fund.

AS 41.45.330 authorizes emergency entry without prior notice onto land to abate an emergency which constitutes a danger to the public health and safety.

AS 41.45.340 contains miscellaneous powers by SMCRA, sec. 412.

AS 41.45.900 specifies that the requirements of the chapter apply to government agencies, including publicly-owned utilities.

AS 41.45.910 exempts commercial coal operations which affect two acres or less from the chapter, as well as coal extraction as part of government-financed construction, and extraction of coal for the non-commercial use of the land owner or lessee.

AS 41.45.920 authorizes departures from the environmental performance standards for experimental practices of limited size which do not downgrade the environmental or public health or safety standards of the program.

AS 41.45.930 provides that this chapter does not affect water rights, and that any impairment of water supply must be remedied by the operator.

AS 41.45.940 provides authority for the commissioner to require certification of blasters, a power required by 30 CFR 732.15(b)(12).

AS 41.45.950 creates a civil cause of action against state agencies and alleged violators for persons who may be adversely affected by a failure to comply with the chapter. This provision is required by 30 CFR 732.15.(b)(10).

AS 41.45.960 provides that any provision of this chapter which the Secretary of the Interior determines to be inconsistent with the federal act is invalid. This provision merely recognizes that since the Interior Secretary has the power to declare inconsistent state provisions invalid for purposes of federal program approval, the provision should become ineffective as a matter of state law, as well. The second part of this section requires the commissioner to review all changes made in the federal act or regulations, and to make appropriate recommendations as to whether or not the state program should be changed.

AS 41.45.970 clarifies that this chapter does not modify any state agency's powers in law, except as specifically provided by this chapter and the implementing regulations. This section also makes the requirements of the chapter applicable to lands conveyed out of federal ownership, and, with Section 7, exempts the Act from the requirements of permit reform legislation, due to inconsistencies with federal law.

AS 41.45.975 is a severability clause.

AS 41.45.980 makes the Administrative Procedure Act (AS 44.62) applicable to this chapter unless otherwise provided.

Section 2 of the bill requires applications to be submitted under this chapter within two months after the date the state program is approved by the Secretary of the Interior, and requires the Commissioner to process such an application within eight months after the Secretary's approval. These time frames are mandated by SMCRA, sec. 502(d).

AS 41.45.998 is a definitions section.

AS 41.45.999 cites the short title of the chapter, the "Alaska Surface Coal Mining Control and Reclamation Act."

Section 3 provides timeframes for initial applications and decisions on them.

Section 4 of the bill reserves the right of the state to contest the constitutional or statutory validity of any of the regulations issued under the federal act.

Section 5 of the bill authorizes the immediate adoption of regulations to implement new AS 41.45 although the regulations will not take effect until the effective date of the rest of the bill.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

April 5, 1982

The Honorable Don Bennett  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Bennett:

As you are aware, the fiscal note to SB 843, which establishes Alaska's Surface Coal Mining Program, requests approximately \$163,000 from the State's general fund for fiscal year 1983. An additional \$403,000 would be supplied from federal funds. Although I am keenly aware of the budget pressures facing the State, I am writing to explain why State funding is vital for our Surface Mining Program to be a success.

SB 843 is the foundation for the Surface Mining Program which the Department intends to submit to the Department of the Interior later this year. The bill is supported by the coal industry and, with minor reservations, by public interest groups. Upon approval by the Interior Department, the Alaska Department of Natural Resources will replace the federal Office of Surface Mining as the regulatory authority for coal mining operations in the State. As part of the Secretary of the Interior's decision on whether or not to approve a State program, he must find that the State agency has "sufficient legal, technical, and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program..." 30 C.F.R. sec. 732.11(d).

The funding contained in the fiscal note for SB 843 will enable that finding to be made. Once the State has an approved program, we are entitled to 50% reimbursement from the federal government for expenditures in regulating surface mining on non-federal lands in the State, and 100% funding for regulation of such operations on federal lands.

The Honorable Don Bennett  
Page Two  
April 5, 1982

SB 843 also establishes an Abandoned Mine Lands (AML) Program and a Small Operator Assistance Program (SOAP), both of which are funded entirely by the federal government. The money for these programs comes from a severance tax that has been paid by coal operators to the federal government since 1977. In part, then, we will be receiving back money which has been paid by the Usibelli mine since 1977, and will be paid by other operators as new coal mines are developed in the State. I should also note that AML funds are only available to the State if the Secretary of the Interior approves our Surface Mining Regulatory Program. These funds are available for reclaiming abandoned mine lands which were left in an inadequate reclamation status prior to passage of the 1977 federal law. At present, 18 such sites have been identified, and we anticipate many more such sites will be discovered upon more thorough investigation.

The approximately \$290,000 of State and federal funding requested in FY83 to run the Surface Mining Regulatory Program contrasts with the following amounts estimated by other western states for the same period: Colorado, \$1,520,000; Montana, \$1,531,000; New Mexico, \$908,000; Wyoming, \$2,357,000. Our contemplated staff of four people contrasts with 29, 16, 16, and 49, respectively, for those states. This staffing level should be adequate to handle regulatory activities until there are four or more operations in the State, at which point we predict the need for one additional staff person (in Fiscal Year 1985). The four positions requested would also constitute the staff for the AML program and SOAP.

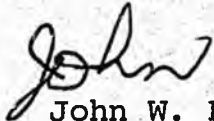
The positions projected for the program are a geologist, environmental engineer, land management officer, and clerk-typist, which we deem to be the minimum necessary to run the various programs. Present mining personnel in the Department are already overtaxed, due, in part, to the record number of mining claims which were filed this year and our initiation of a Coal Leasing Program. We anticipate that a fair amount of the technical analysis required by SB 843 programs will be handled through contracts to private consultants, since a program of our size does not justify employment of the broad spectrum of disciplines required by the federal law. The geologist will be the manager of the Surface Mining Program. His primary duties will include supervision of contracts for review of permit applications, abandoned mine lands work, small operator assistance, and review of petitions to designate lands unsuitable for mining; making initial departmental

The Honorable Don Bennett  
Page Three  
April 5, 1982

decisions or recommendations on permit applications, bond release, enforcement actions, petitions to designate lands unsuitable, etc.; and preparing and negotiating grant requests and agreements with the Department of the Interior. The environmental engineer will be the primary inspector under the program, as well as assisting and complementing the geologist in the above tasks. The duties of the land management officer will focus on compliance with the myriad public participation requirements, record-keeping, and general review and response regarding different new responsibilities under this program (i.e., reviewing exploration permits and notice of intent). The clerk-typist will provide secretarial support.

In summary, the funds requested constitute what we believe is the minimum funding level necessary for the Department to fulfill its new duties under SB 843, as well as to obtain approval of our program by the federal government. In addition, approval of SB 843 and this funding should result in a better than 2:1 federal match of funds for these programs.

Sincerely,



John W. Katz  
Commissioner

cc: The Honorable Al Adams  
The Honorable Robert H. Bettisworth  
The Honorable Ed Dankworth  
The Honorable Bettye Fahrenkamp  
Keith Specking  
Ron Lehr  
Phil Holdsworth, Coal Association

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

To: Senator Ed Dankworth  
Alaska State Senate

April 12, 1982

From: Mark Wittow  
Special Assistant  
to the Commissioner  
Dept. of Natural Resources



Re: Summary of CSSB 843 (Alaska Surface Coal Mining  
Control and Reclamation Act)

David Rogers has asked me to provide you with a short summary of CSSB 843. The bill establishes the statutory basis for state assumption of responsibility for coal mining and reclamation activities on all lands in Alaska. I will also provide a bit of context for the legislature.

In early 1977, President Carter signed the federal Surface Mining Control and Reclamation Act into law (SMCRA). That law established a detailed set of standards and procedures for coal mining operations, and provided for their enforcement by the Secretary of Interior. The Federal law allows for state conduct of the program, if the state laws and regulation are as effective as the federal requirements. During the past two years, this Department circulated several drafts of a proposed state statute, resulting in the introduction this session of SB 843. As introduced and amended by the Senate Resources Committee, the bill is supported by the State's coal industry, and satisfies virtually all of the concerns raised by interested parties during the comment period. Frankly speaking, the bill enjoys this widespread support because of the severity of the federal law, and the belief that state conduct of a surface coal mining program would likely be considerably more enlightened than a program directed from Washington, D.C.

The key components of CSSB 843 are as follows:

1. A permit, issued by DNR, is required to conduct surface coal mining operations in the State. The contents of the permits are to be set out in regulation, with special assistance provided for small operators.

Senator Ed Dankworth  
April 12, 1982  
Page 2

2. A performance bond covering the costs of completing reclamation operations must be provided by the permit applicant. Some substitutes for the bond are acceptable. Before the bond is released, the applicant's reclamation work must be inspected and evaluated.
3. A process for designating lands "unsuitable" for all or certain types of coal mining is established.
4. Procedures for a program to rehabilitate abandoned mine lands are established; this program is financed by a federal fund.
5. In general, the bill provides for inspection and enforcement powers necessary to carry out the Act; for public notice and comment procedures; and for recognition of Alaska's unique conditions in determining substantive requirements.

A sectional analysis of CSSB 843 is attached.

Other elements of the program

If this bill is passed, the Department will rapidly move to adopt regulations to satisfy the additional requirements for the State's assumption of responsibility for surface mining operations. A draft set of regulations was circulated for comment a year ago; another draft is being reviewed in sections this spring by the coal industry, regional corporations, environmental groups and other interested parties.

The Department is continuing work on the steps necessary to continue to receive federal funding for development and implementation of a State program. The attached fiscal note provides a general indication of the scope of a State program, and the sources of funds for it. Our letter of April 5 to Senator Bennett, also attached, further details the funding requirements for the state coal mining program.

Please let me know if you have further questions or would like additional information on any of the aspects of the bill discussed above.

JAY S. HAMMOND  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 9, 1982

The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. II, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to surface coal mining and the surface effects of underground coal mining. The bill is an edited and corrected version of HB 762, introduced at my request February 12, 1982.

This bill is a response to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87 (SMCRA), which provides for the establishment of a nationwide program for the regulation of surface coal mining and reclamation. That regulation is to be carried out by the Secretary of the United States Department of the Interior unless he approves a state program which would vest exclusive authority for that regulation in the state. This bill is designed to provide the authority necessary for the state to submit such a program and assume regulation.

The program proposed in this bill is both complicated and comprehensive. Most of its contents are mandated by federal law and regulations, although some improvements on the federal law have been made, and the bill is considerably shorter than its federal counterpart.

The most compelling reason for the state to undertake this program is to assure that surface coal mining and reclamation is conducted in accordance with Alaskan needs, conditions, and concerns. With the present and potential vast future development of Alaska coal, it is essential that the state tailor a program which meets the needs of both local coal development and deals effectively with the conservation concerns of our citizens and the unique Alaskan environment. This bill is the tool to do this.

SB 113

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. \_\_\_\_\_  
Title Alaska Surface Coal Mining Control and Reclamation Act  
Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Natural Resources  
Program Category Affected Management of Mineral Resources  
BRU, Program, Or. Subprogram(s) Affected Mineral Development  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		157.1	157.1	200.2	200.2	200.2
200 TRAVEL		19.8	20.9	42.1	49.5	54.5
300 CONTRACTUAL		375.0	490.3	393.3	428.7	467.3
400 COMMODITIES		1.0	1.1	1.5	1.6	1.8
500 EQUIPMENT		13.0	10.0	3.8	3.0	3.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>565.9</b>	<b>679.4</b>	<b>642.3</b>	<b>684.4</b>	<b>728.2</b>

FUNDING (Thousands of Dollars)

GENERAL FUND		161.0	200.0	180.7	202.5	213.0
FEDERAL FUNDS		402.0	477.6	449.6	479.8	513.2
OTHER (Specify Source)						

POSITIONS

FULL TIME		4	4	5	5	5
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

See Attachment

IV. DATE 2/3/82

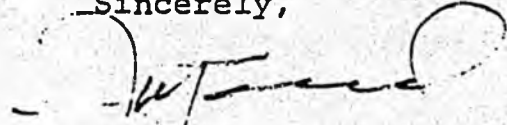
PREPARED BY *Jeff Hanson*  
AGENCY Natural Resources  
PHONE 465-2400

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)

If the state does not assert its jurisdiction in this area, the Office of Surface Mining in the Department of the Interior is required to become the regulatory authority to administer a program for the regulation of Alaskan surface coal mining and reclamation operations.

A section-by-section analysis of the bill is attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay S. Hammond", with a large, stylized flourish at the end.

Jay S. Hammond  
Governor

### III. ANALYSIS

This note assumes that a regulatory program is approved by the Secretary of the Interior and becomes effective on 12-31-82.

#### A. Personal Services

The program will require 4 positions at its inception: Geologist IV, Env. Engineer III, Land Management Officer II and Clerk-Typist III. An additional Scientist/Engineer II position is projected for FY 85 and beyond due to additional coal operations projected in the state at that time.

The Geologist will be the manager of the surface mining regulatory program. He will supervise contracts for review of permit applications, abandoned mine lands work, small operator assistance, etc.; make initial departmental decisions or recommendations on permit applications, bond release, enforcement actions, petitions to designate land unsuitable, etc. The Env. Engineer will be the primary inspector under the program, as well as assisting and complementing the Geologist in the tasks enumerated above. When additional operations come on line (projected in FY 85), an additional engineer/scientist will be required to meet the inspection workload. The duties of the Land Management Officer will focus on compliance with public notice and public participation requirements, record keeping, and general review and response regarding different new responsibilities of the Department under this program (i.e., reviewing exploration permits and/or notice of intent). The Clerk-Typist will provide secretarial support.

#### B. Travel

The travel budget is composed largely of field inspections and field visits to coal development sites. Other travel funds would be spent on required meetings with operators and members of the public and other agency officials, and public hearings. There would also be investigation of potential abandoned mine reclamation and small operator assistance sites.

#### C. Contractual

The contractual category includes the abandoned mine land program development and projects (all federally-funded), small operator assistance laboratory work (all federally-funded), review of permit applications, laboratory work for inspections, legal counsel, and review of any petitions for designation of lands unsuitable for surface coal mining. Much of this work is speculative as it is based on projections about future development of the program.

#### D. Funding Sources

The federal government funds 50% of the basic cost of the state regulatory program. All small operator assistance contracts and abandoned mine land work are 100% federally funded. Funds in this category represent the return to the state of a portion of the 35¢ per ton reclamation fee levied against operators by the federal government. Substantially more funds should be available in this category after production begins on new coal operations. In addition, 100% federal funding is available to defray the costs of regulating any surface coal mining operation on federal lands. One of the projected future operations would qualify under this funding category.

3/82  
DNR  
(JA)

## STATE SURFACE COAL MINING PROGRAM

Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, was enacted after lengthy consideration of the impacts and past abuses wrought by the surface mining of coal. The purpose of the Act is set forth in the statute as, "to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining." Furthermore the Act states that the purpose is, "to assure that surface coal mining operations are not conducted where reclamation as required by the Act is not feasible.." and "that the operations are conducted so as to protect the environment."

The Surface Mining Act requires that states develop acceptable programs for carrying out the federal standards. If this is not accomplished, the Act requires the Secretary of Interior to develop a federal program to regulate surface coal mining within the state. To implement the Act, the Office of Surface Mining (OSM) of the Department of Interior has promulgated detailed regulations. Though these regulations have yet to be finalized and are currently under review by the Administration, the regulations that are currently in effect can provide a reasonable indication of the emerging regulatory program that will be implemented in Alaska.

There are essentially four major program elements. They are: permitting and enforcement of surface mining and exploration, establishing reclamation bonds, the reclamation of abandoned mined lands, and the designation of areas as unsuitable for surface mining. Each of these program elements will be outlined in varying detail below. The state programs are also to include: the development of appropriate state law and regulations to implement the program, a reasonable permit fee structure, inspection and enforcement personnel and practices, civil penalties for non-compliance, state and federal consultation, public participation, program administration, and judicial review.

It should be noted that the discussion will reference only the surface mining of coal. The provisions of the Act are essentially the same for regulating the surface effects of underground mining.

### Permitting and Enforcement

The permitting process includes several major features, including the submission of mining permit applications which incorporate both a mining plan and a reclamation plan, as well as several opportunities for public participation. The permit application is required to include baseline information on the following:

- general environmental resources, with specific consideration to cultural and historic resources;
- fish and wildlife resources, including a baseline study and coordination with appropriate governmental bodies;
- vegetation, including an analysis of the potential for reestablishing vegetation on the mined land;
- soil resources;
- the hydrology and geology of the area;
- groundwater and alternative water supplies for public consumption
- surface water characteristics;
- climatology; and
- land use information, including land capability and productivity before mining.

In the permit application, the proposed operator must also supply a detailed mining operation plan. This covers not only the earth moving and extraction details but also procedures or plans to minimize impacts on or from:

- existing structures, particularly dwellings,
- air pollution,
- blasting, and
- fish and wildlife resources.

Additionally the application must include an acceptable reclamation plan. It should be noted that reclamation is to occur simultaneous with the mining operation and the regulations provide specifics on the practices, sequencing, and time periods. The following are some of the key components of the reclamation plans:

- detailed time schedule for reclamation;
- detailed estimate of the cost of reclamation;
- plan for backfilling, soil stabilization, compacting, and grading;
- plan for removal, storage, and redistribution of topsoil, subsoil, and other material;
- a revegetation plan including schedule, species, planting techniques, mulching, soil testing, and other measures;
- techniques for maximizing the recovery of the coal resources;
- a plan for controlling and disposing of all acid and toxic-forming materials, and materials which constitute a fire hazard;
- techniques for monitoring and maintaining the hydrologic balance of the area;
- assurance of compliance with the Clean Air Act, the Clean Water Act, Health and Safety Standards, and other applicable state and federal laws.
- reclamation or continued use plans for sediment basins, impoundments, dikes and embankments;
- a post mining land use plan including the relationship of the proposed land use to existing land use policies and plans.

Through the series of plans and data requirements of the application, detailed information is transmitted from the operator to state agency personnel. These personnel will be required to review the material to insure that it meets the standards to be established under the state surface mining program. Permit applications will be submitted for each increment of mining. Permits will generally include area increments that can be successfully mined in less than five years and additional mining would be subject to additional permits or to amendments to the permits.

Citizen participation in the permitting process is required. Several provisions provide this opportunity:

- The permit applicant is required to provide notice of his intention to explore or to request a permit and the notice is to be both published in a newspaper and posted in the Department's offices.
- Any person whose interests are or may be adversely affected has the right to file a written objection or to request an informal conference.
- The permit data is to be made available by the state regulatory authority for inspection and copying at reasonable times and costs.
- Any person having an interest that is or may be adversely affected can utilize the appropriate administrative and judicial appeals.

The inspection and enforcement processes give the state the right of entry to examine mining and reclamation practices at the mine site. It

requires the regulatory agency to conduct partial inspections on a monthly basis and at least one complete inspection of the mine area in each calendar quarter. The agency is required to issue violation orders for non-compliances to the permit and the performance standards. Fines are to be assessed for violations following a specified administrative procedure. The inspector may issue an order of cessation of surface mining and reclamation operations if the cited violation creates an imminent danger to the health or safety of the public or is causing significant imminent environmental harm. A permit can be suspended or revoked if the agency establishes that a pattern of violations exist because of an operator's willfully or unwarranted failure to comply with conditions or requirements of the permitting authority.

The public also has been given the right to request that an inspection be made of a particular mining operation if there is reason to believe that a violation in mining or reclamation practices exists. The citizen has the right to accompany the state inspector to the mine site. In addition if the state fails to respond in a timely fashion, the citizen can request that OSM undertake the inspection.

#### Reclamation Bonds

The Federal Act also establishes the requirement that a bond be posted to cover the cost of reclamation if the operator fails to adequately reclaim the mined land. The bond amount is to be established by the state regulatory authority. The bond would be forfeited if the operator fails to reclaim the land in the manner described in the approved reclamation plan. The forfeiture of the bond does not preclude civil penalties from being sought by the state for the non-compliance.

The general standard for determining the bond amount is that the performance bond is to include all costs to the state regulatory authority for performing the reclamation, restoration, and abatement work if the applicant fails to achieve compliance for revegetation or an approved post mining land use.

Specifically, these costs are to include:

- The estimated costs as submitted by the permittee (these are to be included in the permit application.)
- Additional costs that may accrue to the state because of applicable public contracting costs or the need to bring personnel and equipment to the permit area.
- Any additional estimated costs necessary, expedient, and incident to meeting the reclamation requirements.
- An additional amount reflecting anticipated cost changes for a five year period.

Several other requirements are also applicable They are:

- In no case will the performance bond be less than \$10,000 for the entire area under one permit.-
- The amount of the bond shall be adjusted periodically as the acreage is increased or decreased, when the costs of future reclamation, restoration, or abatement has changed substantially. or the operator requests a reduction after establishing that his method of operation or other circumstances reduce the potential costs of reclamation by the state.

#### Abandoned Mined Land Reclamation Program

The federal act establishes a program for the reclamation of abandoned

mined land (AML). It is funded by a coal severance tax. The details of the program include:

- creation of an abandoned mine land reclamation fund and a fee collection and coal production reporting system.
- guidelines and priorities for the expenditure of AML funds.
- specification of reclamation requirements for both coal and non-coal abandoned mine lands.
- procedures and rights of entry for private lands.
- acquisition, management, and disposition of lands and water acquired in conjunction with reclamation actions.
- establishing requirements for state reclamation plans.

The state has the option of establishing an AML program or deferring to OSM. In this latter case the state would lose control of how the AML funds, accruable to the state reclamation fund, would be spent by OSM. The reclamation fund is supported by a federal severance tax of 35¢ per ton of strip mined coal and 20¢ per ton of deep mined coal. The state receives 50% of the funds collected from operations in the state as well as a similar share from monies recaptured from liens and direct charges to private landowners for reclamation undertaken on their property. The Usabelli operation has been assessed the severance tax for several years and as of January 1, 1982 the State AML fund contained over \$500,000 with a current annual income of approximately \$150,000. Annual income levels will exceed \$2.5 million per year assuming the minimum levels of production proposed for the Beluga field.

#### Lands Unsuitable for Mining

The Surface Mining Act also includes provisions for designating lands as unsuitable for all or certain types of surface coal mining. The designations are to be triggered by interested individuals and organizations in advance of permitting so as to provide the coal industry with guidance on which lands are not currently perceived as being suitable for coal mining activities.

The program for designating lands as unsuitable for surface coal mining consists of three principal components; 522 petition process, 522 permit review process, and a 522 exploration review process. (The 522 nomenclature is derived from the Section creating the program in the federal statute). Each required process, as specified by the federal law and regulations, sets forth elements of an analysis and findings that must be based on a comprehensive set of criteria which in turn warrant the use of interrelated and standardized analytical procedures.

The 522 petition process allows a person or organization to present allegations to the regulatory authority, suggesting that an area be designated unsuitable for all or certain types of surface coal mining. These allegations may be based on environmental, public safety, or planning considerations, outlined in the 522 discretionary criteria, or relate to reclamation technologies, defined as mandatory criteria. The process also allows a person to present allegations to support termination of a designation for areas which were previously designated.

The mandatory criteria require a review of the technologic feasibility of reclaiming a surface coal mining site pursuant to the performance standards for mining and reclamation. Should such an allegation be substantiated by the regulatory agency, the area must, by law, be designated.

A petition may also allege that surface coal mining will;

- be incompatible with existing state, areawide, or local land use plans and policies.
- affect natural hazard lands.
- affect renewable resource lands.

- affect fragile or historic lands.

Should one or more of these allegations be substantiated, the regulatory agency has the discretion to designate the area.

The federal law establishes a process for considering the petition. It involves public hearings, coordination with other governmental agencies, and up to a year to carry out the necessary analysis. Prior to the designation of an area, the regulatory authority must also prepare an economic and coal supply analysis.

Lands exempt from designation include lands which were being mined on or before August 3, 1977, lands on which permits have been issued, and lands where substantial legal and financial commitments were made prior to January 4, 1977.

The 522 permit review process is required to insure that permits are not granted for areas designated by the state or congressionally designated. Congressionally designated areas include:

- lands within the boundaries of the National Park System, the National Wildlife Refuge System, The National System of Trails, the National Wilderness Preservation System, including Wild and Scenic Rivers, National Recreation Areas, and in some cases, the National Forest System;
- lands within 300 feet of any public building, school, church, community or institutional building or public park;
- lands within 100 feet of a cemetery;
- publicly owned parks and publicly owned places included on the National Register of Historic Places (unless approved by the management agency);
- lands within 300 feet of any occupied dwelling (subject to waivers);
- lands within 100 feet of a public road right of way (subject to approval by the management agency).

There is a grandfather clause exempting Congressional designations if all permits were held prior to August 3, 1977 or if the applicant can demonstrate to the regulatory authority that the coal is both needed for and adjacent to an on-going operation for which all permits were held prior to August 3, 1977. These provisions are called "Valid Existing Rights".

The 522 exploration review process assesses the compatibility of proposed coal exploration operations within areas which have been designated. Rather than prohibiting all exploration on designated lands, the process evaluates compatibility of the exploration with the values for which the land was originally designated.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

April 5, 1982

The Honorable Don Bennett  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Bennett:

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The finding contained in the fiscal note for SB 843 will enable that finding to be made. Once the State has an approved program, we are entitled to 50% reimbursement from the federal government for expenditures in regulating surface mining on non-federal lands in the State, and 100% funding for regulation of such operations on federal lands.

The Honorable Don Bennett  
Page Two  
April 5, 1982

SB 843 also establishes an Abandoned Mine Lands (AML) Program and a Small Operator Assistance Program (SOAP), both of which are funded entirely by the federal government. The money for these programs comes from a severance tax that has been paid by coal operators to the federal government since 1977. In part, then, we will be receiving back money which has been paid by the Usibelli mine since 1977, and will be paid by other operators as new coal mines are developed in the State. I should also note that AML funds are only available to the State if the Secretary of the Interior approves our Surface Mining Regulatory Program. These funds are available for reclaiming abandoned mine lands which were left in an inadequate reclamation status prior to passage of the 1977 federal law. At present, 18 such sites have been identified, and we anticipate many more such sites will be discovered upon more thorough investigation.

The approximately \$290,000 of State and federal funding requested in FY83 to run the Surface Mining Regulatory Program contrasts with the following amounts estimated by other western states for the same period: Colorado, \$1,520,000; Montana, \$1,531,000; New Mexico, \$908,000; Wyoming, \$2,357,000. Our contemplated staff of four people contrasts with 29, 16, 16, and 49, respectively, for those states. This staffing level should be adequate to handle regulatory activities until there are four or more operations in the State, at which point we predict the need for one additional staff person (in Fiscal Year 1985). The four positions requested would also constitute the staff for the AML program and SOAP.

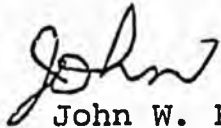
The positions projected for the program are a geologist, environmental engineer, land management officer, and clerk-typist, which we deem to be the minimum necessary to run the various programs. Present mining personnel in the Department are already overtaxed, due, in part, to the record number of mining claims which were filed this year and our initiation of a Coal Leasing Program. We anticipate that a fair amount of the technical analysis required by SB 843 programs will be handled through contracts to private consultants, since a program of our size does not justify employment of the broad spectrum of disciplines required by the federal law. The geologist will be the manager of the Surface Mining Program. His primary duties will include supervision of contracts for review of permit applications, abandoned mine lands work, small operator assistance, and review of petitions to designate lands unsuitable for mining; making initial departmental

The Honorable Don Bennett  
Page Three  
April 5, 1982

decisions or recommendations on permit applications, bond release, enforcement actions, petitions to designate lands unsuitable, etc.; and preparing and negotiating grant requests and agreements with the Department of the Interior. The environmental engineer will be the primary inspector under the program, as well as assisting and complementing the geologist in the above tasks. The duties of the land management officer will focus on compliance with the myriad public participation requirements, record-keeping, and general review and response regarding different new responsibilities under this program (i.e., reviewing exploration permits and notice of intent). The clerk-typist will provide secretarial support.

In summary, the funds requested constitute what we believe is the minimum funding level necessary for the Department to fulfill its new duties under SB 843, as well as to obtain approval of our program by the federal government. In addition, approval of SB 843 and this funding should result in a better than 2:1 federal match of funds for these programs.

Sincerely,



John W. Katz  
Commissioner

cc: The Honorable Al Adams  
The Honorable Robert H. Bettisworth  
The Honorable Ed Dankworth  
The Honorable Bettye Fahrenkamp  
Keith Specking  
Ron Lehr  
Phil Holdsworth, Coal Association



# United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

MAR 19 1982

Mr. John W. Katz  
Commissioner, Alaska Department  
of Natural Resources  
Pouch M  
Juneau, Alaska 99811

Dear Mr. Katz:

Thank you for the opportunity to review House Bill 762, containing Alaska's proposed surface mining law. With one major exception, we believe the bill meets the standards for State program legislation required in the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 et seq.

Section 41.45.250(b) does not require the prepayment of a proposed civil penalty into escrow as required by Section 518(c) of SMCRA. This provision is an essential part of all State programs which must be included in the State law. We urge you to include this statutory provision.

We have the following other concerns about House Bill 762, which concerns can be corrected by regulation or further explanation:

1. Section 41.45.050. This section is acceptable if the penalty for a Class A misdemeanor is at least a fine of not more than \$2,500 or imprisonment of not more than one year, or both.
2. Section 41.45.170(b). The phrase, "or such longer period as field conditions require," is not in accordance with Section 519(b) of SMCRA, which permits only a 30 day period to inspect and prepare an evaluation. If, however, it is explained in the State program submission that the above phrase refers only to the impossibility to inspect because of weather conditions during the long winter, this section should be acceptable.
3. Section 41.45.230(b). In this section, the word "may" appears in regard to what the commissioner requires of a permittee. SMCRA Section 517(b) uses the word "shall". If the specific requirements of permittees are contained in the State program regulations, this section will be acceptable.
4. Section 41.45.240. (a) This section does not state that the commissioner shall "immediately" issue a cessation order if, at the end of the abatement period, the violation has not been abated. This deficiency can be cured by regulation. (b) This section allows the

commissioner, "for good cause," to extend beyond 90 days the time for abatement of a violation. If "good cause" is defined by regulation in a manner no less effective than the comparable Federal rule at 30 CFR 843.12 (46 FR 41702, August 17, 1981), this section will be acceptable.

5. Section 41.45.240(f). This section does not provide that the commissioner shall "forthwith" issue a show cause order if he finds a pattern of violations as in SMCRA Section 521(a)(4). This deficiency can be cured by regulation.

6. Section 41.45.240(i). This section omits the award of costs in matters under judicial review. If this matter is covered under other State law in a manner which is in accordance with SMCRA Section 525(e), this section will be acceptable.

7. Section 41.45.250(h). The last sentence of this section erroneously refers to AS 41.45.260. The reference should be to AS 41.45.250(1).

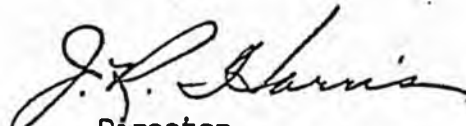
8. Section 41.45.410. This section omits litigation costs, which was subsection (e) in the previous draft of the legislation. This must be included in the bill.

9. Section 41.45.170(a). This section does not require the same steps for a permittee request for release of bond as in SMCRA Section 519(a). This deficiency can be cured by regulation.

10. Section 41.45.420(15). The definition of "significant imminent environmental harm to land, air or water resources" is in conflict with the Federal definition at 30 CFR 701.5, by using the term "irreparable" instead of "reparable". Under the State definition, it would be meaningless to issue an order requiring abatement in an imminent harm situation since any reclamation would be to no avail.

Of course, any legislation which is enacted would be subject to public notice and comment in the State program approval process. We look forward to receiving the State's submission in the near future. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

  
Director



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SEP 23 1981

Honorable Ted Stevens  
United States Senate  
Washington, D.C. 20510

Dear Senator Stevens:

Thank you for your September 17 letter asking that the Office of Surface Mining (OSM) not implement a Federal regulatory program for Alaska. We apologize for the delay of our response. You also asked the status of the National Academy of Science (NAS) study of Alaska mandated by Section 708 of the Surface Mining Control and Reclamation Act (SMCRA).

The Section 708 study was completed and transmitted to OSM in October 1980. As a result of OSM's close review of this study, we have concluded that sufficient flexibility exists in the Act to accommodate Alaska's unique environmental conditions. Therefore, we have no plans to ask Congress for changes to the Act. If it becomes apparent in the future that changes are needed, we will consider a request to Congress at that time. On September 22 we sent a letter to Lieutenant Governor Terry Miller, with copies to you, Senator Frank Murkowski, and Representative Don Young, in which we reported this conclusion and in which we stated our desire to work with Alaska to transfer primary regulatory responsibility to the State in accordance with the procedures and criteria specified in the Act.

Several environmental organizations have given us formal notice of their intent to file suit to compel the implementation of a Federal program for Alaska. These organizations point to the provisions of Section 504 of the Act in arguing that we are under a mandatory obligation to take such action at the present time. We are, of course, committed to aid Alaska in the development and implementation of a State regulatory program. This commitment has led us to negotiate with the environmental organizations that have threatened suit in an effort to secure for Alaska enough time to develop and submit to us a proposed State regulatory program. To date these negotiations have proceeded well, and we hope to avoid litigation on this subject.

We believe that Alaska is making substantial progress towards a final program submission and that it remains committed to achieving primacy at the earliest possible date. For our part, we are equally committed to assisting the State in developing and implementing a program that meets the requirements of the Act but recognizes Alaska's unique circumstances. Your letter was only the most recent of several communications the Department has received from Alaskans expressing strong and immediate interest in avoiding a Federal regulatory program for the State. To that end, we have directed OSM to continue to work closely with the Alaska Department of Natural Resources to develop an approvable State program. We have every confidence that Alaska will be successful in doing so.

We appreciate your interest in this matter. Please let us know if we can be of further service.

Sincerely,

Donald Paul Noser

Acting SECRETARY

Howard Roitman

Attorney  
Surface Mining Consultant

*David Rogers*

April 1, 1982

(This is not, however, an April Fool's joke.)

MEMORANDUM

TO: Mark Wittow  
Laurel Murphy

Per a telephone conversation with Walt Morris (Assistant Solicitor for Enforcement, Division of Surface Mining, Washington, D.C.) this date, the Settlement Agreement regarding implementation of a surface mining program in Alaska provides as follows:

If the state submits a program by September 1, the Department will act expeditiously to reach a decision on it. In the event that the state fails to submit a program by that date, the Department agrees to publish a proposed program in the Federal Register by November 1, 1982 and a final program by March 1, 1983. If the state legislature adjourns without having passed the requisite bill, the Department schedule for proposing and implementing a federal program is moved up to require publishing a proposed program within 120 days of the legislature's adjournment.

This is, of course, probably an impossibly short timeframe for Interior to meet. This timeframe would ensure at least two undesirable results: First, a federal program would certainly be implemented before the 1983 session of the legislature could make another try at a bill, thereby triggering a permit application requirement for Usibelli, and conceivably an EIS. The worst-case scenario which we've joked about, that Usibelli could be shut down, becomes a little closer to reality given the present backlog of federal mine plan approvals and the uncertainty as to whether Usibelli is permitted according to the federal interim program. Second, this timeframe ensures that the federal program would not reflect unique Alaskan conditions since the time would allow only publication of a "generic" type federal program, probably similar to that already published for Georgia.

*Howard*

cc: J. Antenucci

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

March 25, 1982

The Honorable Bettye Fahrenkamp  
Alaska State Senate  
Pouch "V"  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Re: Amendments to SB 843

Thank you for the timely and careful consideration of SB 843 by the Senate Resources Committee. I would appreciate the Committee's consideration of several amendments that either make technical corrections to the bill or that help reduce unnecessary conflicts among state agencies concerning the legislation.

We have discussed these proposed amendments with Phil Holdsworth, who has expressed no objection. Due to time constraints, we have not reviewed the amendments with coal operators or public interest groups. Under the same time constraints, we have reviewed these amendments with interested state agencies and have obtained their preliminary approval of the bill if amendment number 3 is adopted. The amendments, with our explanation, are set out below.

1. Page 34, line 6. End the sentence after the word "continues." A new introductory phrase should be inserted immediately after "continues:" "Such period continues until"

The Department of Law attempted to clarify some awkward phrasing in the House Bill, but in the process reversed the meaning of this section. The mandatory daily penalty kicks in only after the abatement period, as extended by the actions described in (h) (1) and (2) expires. As presently written, the \$750/day penalty applies during the period described in (h) (1) and (2).

2. Page 30, line 10. Insert the following between the words "violator" and "within": "The Commissioner shall hold the conference at a location which allows the

The Honorable Bettye Fahrenkamp  
March 25, 1982  
Page 2

permit area to be viewed during the conference. The Commissioner shall issue a written order affirming, modifying, vacating, or terminating the cessation order..."

This part of the language was juxtaposed in the House Bill, and was inadvertently left out of the Senate Bill. Although the first sentence could be covered by regulations, the present sentence, requiring waiver of the conference within five days of the conference, does not make any sense and should be changed.

3. Page 46, line 27. Delete the phrase "with regard to the issuance and administration of coal leases and exploration permits," and replace with "to enforce laws and regulations within its jurisdiction."

Page 47, line 2. After "under it," add a new sentence to read: "The commissioner shall coordinate permitting efforts to prevent unnecessary duplication in permit review."

This amendment would clarify the role and responsibilities of other state agencies for coal operations, and satisfy several of the concerns expressed in testimony to the Senate Resources Committee. The suggested language merely clarifies what is already true in fact.

4. Page 26, line 19. Change "he" to "the commissioner."

This would clarify the meaning of the sentence, as "he" could be mistakenly interpreted to refer to the operator.

5. Page 49, line 5. Change the work "irreparable" to "reparable."

This change would satisfy concerns expressed by the federal Office of Surface Mining. Alternatively, the word "irreparable" could simply be removed. As currently written, the definition is incorrect.

6. Add two new sections at the end of the bill to read:

The Honorable Bettye Fahrenkamp  
March 25, 1982  
Page 3

"\* Section 7. AS 41.45.970, as enacted in Section 1 of this Act, is amended by adding a new subsection to read:

(c) The requirements of AS 44.62.632 - 638 do not apply to actions governed by this chapter.

\* Section 8. Section 7 of this Act takes effect on the effective date of a version of SB 84, "An Act relating to processing of permits by state agencies."

Federal requirements prevent us from being able to include the surface mining program in the permit reform legislation.

7. Page 2, line 17. Change "with" to "within".  
Page 30, line 12. Insert "or" between "administrative" and "judicial."

These are typographical errors.

One other possible change is worthy of discussion. The March 19, 1982 letter from the Department of the Interior's Office of Surface Mining raises one serious concern in regard to the State's proposed surface mining law:

"With one major exception, we believe the bill meets the standards for State program legislation required in the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 et seq.

Section 41.45.250(b) does not require the prepayment of a proposed civil penalty into escrow as required by Section 518(c) of SMCRA. This provision is an essential part of all State programs which must be included in the State law. We urge you to include this statutory provision."

Coal operators in all other parts of the United States are subject to this requirement. We originally did not include the provision because we felt it was onerous and a denial of due process. However, it is clear that the provision requested by OSM must be included if the State is to have its surface mining program approved. We therefore recommend its inclusion in your Resources Committee Substitute for SB 843. On the other hand, we would also recommend that litigation funds be included in the fiscal note to enable the State to mount a timely legal challenge to the federal

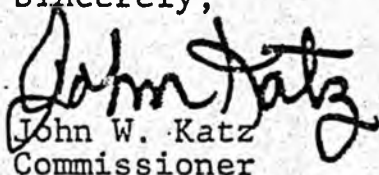
The Honorable Bettye Fahrenkamp  
March 25, 1982  
Page 4

provision. We are in the process of discussing this issue with the coal operators and developing satisfactory language to present to you on Friday.

All of the other comments in the March 19 OSM letter are either addressed by existing State law or Rules of Court, or will be addressed by regulation.

Thank you for your hard work on this important legislation.

Sincerely,

  
John W. Katz  
Commissioner

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811

PHONE:

March 26, 1982

To: Senate Resources Ct.

From: Mark Wittow <sup>MW</sup> and Howard Roitman <sup>HR</sup>

Re: Amendment to SB 843 concerning the escrow of civil penalty provision required by the federal Office of Surface Mining

The following language would likely meet the concern expressed by the Office of Surface Mining regarding the omission of prepayment of a proposed civil penalty into escrow, as required by Section 518(c) of the SMCRA. The suggested language is patterned after a similar provision in the approved Wyoming state program.

Page 32, line 25. Add to the end of paragraph (b):

"If the person wishes to contest either the amount of the penalty or the fact of the violation, the person must submit a bond equal to the proposed penalty amount at the time he files his application for review. The bond shall be conditioned for the satisfaction of the penalty in full if the commissioner's determination as to the occurrence of the violation and the assessment of a penalty are affirmed. The application for review is effective when the bond is approved by the commissioner. If the bond is not approved, the person charged with the penalty has ten days to forward the proposed amount to the commissioner for placement in an escrow account in order to make the petition effective."

LEGISLATIVE SUMMARY

SB 843 "An Act relating to surface coal mining and the surface effects of underground coal mining; and providing for an effective date."

The bill proposes to add a new chapter to AS 41.

Sec. 41.45.010 Basic finding that the state is best able to regulate surface coal mining and reclamation under the U. S. Surface Mining Control and Reclamation Act of 1977. The purposes of the bill include: assuring the responsible extraction of coal, the reclamation of coal mining areas, protecting the rights of surface owners, minimizing degradation of land and water and assuring appropriate public participation in the regulatory process.

- .020 Vest jurisdiction over surface coal mining and reclamation operations in the Commissioner of the Department of Natural Resources.
- .030 Enumerates general duties, including adoption of regulations, issuing permits, holding hearings, issuing orders, inspections, prepare reports, receive grants, participate in the abandoned mine land program, coordination and cooperative agreement with other agencies.
- .040 Regulations adopted and permits issued may vary for a particular condition, type of coal, or area of the state.
- .050 Employees administering or a private contractor may not have a direct or indirect financial interest in an underground or surface coal mining operation. Prescribes a designation of a class A misdemeanor if a person knowingly violates this section. (NOTE: \$5,000 fine and a jail sentence of one year)
- .060 Requires coal mine operators to apply for a permit to conduct surface coal mining and reclamation operations beginning 8 months after approval of the state's program.

If the Alaska program is disapproved and the federal program has not been promulgated, existing operations which comply with the federal statute may continue. Permits which lapse during this period will continue in full force until promulgation of a federal program.

- .070 Permits will be issued for five years. The Commissioner can issue a permit for a longer period if the applicant shows that it is necessary in order to obtain financing for equipment or to open the operation.

A permittee is required to commence operations within 3 years after the permit is issued. This can be extended if the permittee show litigation is precluding commencement of operation or threatens substantial economic loss or for

reasons beyond the control, fault, negligence of the permittee. If the coal is to be mined for use in a synthetic fuel facility or specific major electric generating facility, surface mining is considered to have begun at the time construction of the facility is begun.

- .080 Provides that permits carry a right of successive renewal with respect to areas within the boundaries of the original permit subject to a burden of proof on the opponents of renewal to demonstrate that the operation is not in compliance with regulatory requirements.

Renewals involving new land areas require the same procedures and standards as apply to new permit applications.

Application for permit renewal must be received by the Commissioner at least 120 days before expiration of the permit.

If the application is received at least 120 days before expiration and the permittee has complied with the bonding requirement the operation may continue under the permit after the expiration date until a final administrative decision on the renewal is made.

- .090 Allows the Commissioner to set a fee schedule for a new permit renewal, or transfer permit applications; requires that the fees not exceed the actual or anticipated cost of review of the application.

- .100 Requires the public filing of permit applications and copies of all materials filed under this chapter; with the exception of designated confidential information.

- .110 Requires the Commissioner to adopt regulations relating to the contents of permit applications consistent with the requirements of the federal program. These must take into account the unique mining and environmental conditions of Alaska.

- .120 Establishes small operator assistance for certain laboratory work at no cost. This is for operations which will produce under 100,000 tons of coal annually.

- .130 Provides for public notice of pending applications for surface coal mining and reclamation permits.

- .140 Allows a person who may be adversely affected by the proposed operation, as well as federal, state or municipal agencies, to file written comments and objections to the application within 30 days. Such persons must request an informal conference to discuss their comments or objections with the Department.

The Commissioner is required to issue a decision regarding the permit application within 60 days of the informal conference or as provided in Section .180 below.

- .150 Provides for formal hearings regarding the Commissioner's decision on the permit application upon request of the applicant or any person who may be adversely affected within 30 days after the request. The Commissioner may grant temporary relief pending his final decision when circumstances warrant.
- .160 Requires that before a permit can be issued, the applicant must furnish a performance bond conditioned on faithful performance of the requirements of this statute and the permit. The bond must be sufficient to assure completion of the applicant's reclamation plan by the Department in the event of a forfeiture. In lieu of a bond, the Commissioner may accept cash or negotiable bonds or certificates of deposit, or the Department may accept a self-bond under future regulations to assure financial solvency. The amount of the bond may be adjusted for good cause, including changes affecting land areas and costs of reclamation.
- .170 Contains provisions governing release of performance bonds. The applicant must give notice of its request for release of bond, and the Department must conduct an inspection and evaluation of the reclamation work involved. Provides for staged release of the bond, depending on the degree of reclamation work completed and the Commissioner's evaluation. Persons whose legal interests may be adversely affected, and governmental agencies, may file objections to the release of bond and request a hearing, as may an applicant whose request for bond release has been denied.
- .180 Requires the Commissioner to make a decision on a permit application within 120 days after receipt, which may be extended by an additional 60 days upon receipt of additional information required for a decision. This section sets out the basic criteria for approval of an application. A permit may not be issued if the applicant is currently in violation of environmental standards regarding surface coal mining operation which it operates in the United States or if the applicant has had a demonstrated pattern of willful violations of this chapter.
- .190 Deals with revisions and transfers of permits. The Commission is required to establish guidelines for determining the extent of revision for all permit application requirements and procedures, including notice of hearing.
- A permit can not be transferred, assigned or sold without written approval of the Commissioner. A successor may continue the operation until the transfer application is granted or denied and meets the requirements of this section.
- .200 Requires exploration activity to be conducted only according to regulations adopted by the Commissioner. The regulations must include provisions for reclamation of excavations, roads, drill holes, and the removal of facilities and equipment.

Under a coal exploration permit no more than 250 tons can be removed without specific written approval of the Commissioner.

- .210 Within 120 days after the effective date of this chapter, the Commissioner is required to propose regulations consistent with the environmental performance standards of the Federal law. The regulations promulgated under this chapter for both surface coal mining and reclamation operations and surface effects of underground mining must include appropriate adjustments to meet the conditions in Alaska.
- .220 Requires the surface effects of underground mining be regulated in a similar fashion to surface coal mining operations. The Commissioner can suspend underground coal mining activities in populated areas if there is an imminent danger to the inhabitants.
- .230 Provides the basic authority for the Department to inspect and monitor operations. The Commissioner may require a permit to: make monthly reports, install, use and maintain necessary monitoring equipment or methods and other information relating to the operation as the Commissioner considers reasonable and necessary. The Commissioner can inspect the operation. The inspections are to occur on an irregular basis. Inspections are to occur without prior notice, the inspector must notify the permittee's representative, on the site, upon his arrival and invite the representative to accompany him during the inspection. The inspector is required to file a report about the inspection.
- .240 Sets forth the Department's basic enforcement authority. A violation of this chapter or permit which causes imminent danger to public health or safety or which threatens significant, imminent environmental harm, requires the inspector to issue a cessation order for the whole operation or that portion causing harm. The order remains in effect until further Departmental action. If a violation cited does not cause imminent danger, a notice of violation is issued.

Cessation orders and notices of violation are subject to appeals and full due process hearings by persons who may be adversely affected. The Commissioner is authorized to request the Attorney General to institute a civil action for relief. There are provisions governing judicial review of these actions.

- .250 Provides for both civil and criminal penalties for violations of this chapter and permits. Civil penalties are mandatory for cessation orders (may not exceed \$5,000), but discretionary for notices of violation. Willful and knowing violations are class C felonies (NOTE: \$50,000 fine and 5 years jail). Failure to correct a violation during the period of time permitted by the notice or subsequent extension requires a \$750 per day penalty.

- .260 Requires the Commissioner to use competent and scientifically sound data in determining lands unsuitable for all or certain types of surface coal operations. It allows a person with a legal interest which may be adversely affected to petition the Commissioner to have areas designated unsuitable for all or certain types of coal mining. Areas must be designated unsuitable if the Commissioner determines that reclamation in the area in question is not technologically feasible. There are four discretionary criteria for designating land unsuitable: Mining is prohibited in protected areas (subject to existing rights); National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, National Recreation Areas, publicly owned parks, historic sites, 100 feet of public roads, 300 feet of occupied dwelling, public building, school, church, community or institutional building, public park or 100 feet of a cemetery.
- .270 Provision regarding abandoned mine lands in order to ensure state participation in the federal Abandoned Mine Reclamation Fund. The Fund is for the reclamation of land adversely affected by past coal mining practices. Contains the administrative authority to establish priorities, designate eligible lands, submit reclamation plans and annual projects to the Department of Interior and administer funds received.
- .280 Defines eligible lands as those which were mined or affected by coal mining, left in an inadequate reclamation status, and for which there is no continuing reclamation responsibility under law.
- .290 Gives the Department power to enter onto property for reclamation purposes. Does not create new rights of action or eliminate existing immunities.
- .300 Authorizes the Commissioner to acquire abandoned mine areas for reclamation purposes and to dispose of such property when it is necessary for successful reclamation, in the public interest, serve recreational, historic, conservation, open space, and to meet emergency situations. The Commissioner shall pay the fair market value of the property. The Commissioner can sell the property if it is suitable for industrial, commercial, residential or recreational development. The sale has to be consistent with any state and local land use plans.
- .310 Requires the Commissioner to place a lien upon state funded reclaimed property for the increase in fair market value. Exempted are properties owned before May 2, 1977, the owner did not consent to, participate in, or exercise control over the surface operation which necessitated the project. A person affected by this section may petition for a hearing within 60 days after the lien is recorded.
- .320 Authorized the filling of voids and sealing tunnels with money from the Abandoned Mine Land Fund.
- .330 Authorized emergency entry without prior notice onto land to

abate an emergency which constitutes a danger to the public health and safety

- .340 The Commissioner may request the Attorney General to initiate action for an injunction to restrain any interference with the exercise of the right to enter or work described in .270 - .340. Authorizes the State to construct and operate plants for control and treatment of water pollution from mine drainage in compliance with the Federal Water Pollution Control Act.
- .900 Specifies that the requirements of this chapter apply to government agencies, including publicly-owned utilities.
- .910 Exempts from this chapter extraction of coal for non-commercial use of the land owner or lessee, commercial coal operations which affect 2 acres or less and coal extraction as part of government-financed construction.
- .920 Authorizes departures from the environmental performance standards for experimental practices of limited size and which do not down grade the environmental, public health or safety standards of the program. This provision needs approval of the U. S. Department of Interior.
- .930 Provides that this chapter does not affect a person's water rights and that any impairment of water supply must be remedied by the operator.
- .940 Provides authority for the Commissioner to require training examination and certification of blasters.
- .950 Creates a civil cause of action on behalf of persons who may be adversely affected by a failure to comply with the chapter against both the state agencies and alleged violators. A person commencing action under this section must give 60 days notice and the action can only be filed in the judicial district in which the operation is located.
- .960 Provides that any provision of this chapter which the Secretary of Interior determines to be inconsistent with the federal Act is invalid. Also, requires the Commissioner to review all changes made in the federal Act or regulations, and to make appropriate recommendations as to whether or not the State program should be changed.
- .970 Provides that this chapter is not to be interpreted to modify an existing state agency's powers over coal leases and exploration permits, except as specifically provided by this chapter and implementing regulations. This section also requires that the provisions of this chapter are applicable to lands conveyed out of federal ownership.

- .975 Is the severability clause.
- .980 Makes the Administrative Procedure Act applicable to this chapter unless otherwise provided.
- .985 Cites the short title of the chapter as the "Alaska Surface Coal Mining Control and Reclamation Act."
- .990 Is the definitions section.

Section 2. Requires applications to be submitted under this chapter within 2 months after the date the state program is approved by the Secretary of Interior, and requires the Commissioner to process such an application within 8 months after the Secretary's approval.

Section 3. Reserves the right of the state to contest the constitutional or statutory validity of any of the regulations issued under the federal act.

Section 4. Requires the Commissioner to adopt regulations under the Administrative Procedure Act. The regulations do not take effect until the effective date of Section 1.

Section 5. Provides that Sections 1 and 2 become effective upon approval of the state program by the Secretary of Interior.

Section 6. Provides that Sections 3 and 4 become effective immediately.



# Alaska State Legislature

## SENATE Resources Committee

Office! Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

PO  
STATE CA  
JUNEAU, ALASKA  
(907) 46  
(907) 46

March 19, 1982  
1:35 p.m.

Beltz Room  
Capitol -

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski  
Representative Sutcliffe

### Hearing:

< SB 843 An Act relating to surface coal mining and the surface effects of underground coal mining.

John Katz, Commissioner, Department of Natural Resources, express support for SB 843, explaining that the legislation is required by federal law. One major conflict between SB 843 and federal law has arisen--the absence in SB 843 of the requirement that fines be prepaid into an escrow account pending appeal. Katz finds such a provision constitutionally suspect.

Bob Stiles, Coal Owners and Leaseholders Association, supports SB 843, a "compromise bill", and prefers that the State government rather than the federal, be in charge of the program.

Charles Boddy, representing operational coal miners, spoke in support of SB 843, and opposes prepayment of fines as the taking of property without due process. He prefers the State, rather than the federal government, administer the program.

Joe Usibelli called SB 843 an "excellent compromise bill", stating that the regulations will be the major aspect of the State's coal mining program.

Deena Henkins, Division of Environmental Quality Operations, Department of Environmental Conservation, expressed concern over

Senate Resources Committee

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the fact that "reclamation" and "rehabilitation" are not defined in the Act, and that agency responsibility in the event of forfeiture of bond is not addressed. She stated that the roles of DEC and DNR need to be clarified, the application fee should more closely follow the federal statute, and that several vague terms need to be better defined.

Phil Holdsworth, COAL, responded to Henkins's remarks, stating that SB 843 gives DNR the authority to enter into agreements with other agencies.

The meeting was adjourned at 2:35 p.m.



# Alaska State Legislature

## SENATE Resources Committee

### Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

POUC  
STATE CAPIT  
JUNEAU, ALASKA 99  
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March 22, 1982  
1:35 p.m.

Beltz Room  
Room 211 - Capitol

### Hearing:

- SB 731 Establishing the Shuyak Island State Park.
- SB 769 Removing the requirement that power projects constructed under the energy program for Alaska be owned by the State.
- SB 843 Relating to surface coal mining and the surface effects of underground coal mining.
- SJR 70 Relating to commercial fishing of North Pacific chinook salmon.
- SJR 79 Requesting the National Park Service to adopt procedures providing public notice of proposed regulations, emergency regulations, and field orders for national parks, preserves, and monuments in Alaska.

### SB 731

Senator Mulcahy said a Committee Substitute had been prepared, changing the word "compatible" to "other".

Jim Lieb, Alaska Department of Fish and Game, expressed support for the Committee Substitute.

Senator Gilman moved the acceptance of the Committee Substitute. He then moved CSSB 731 with individual recommendations.

### SB 769

Senator Gilman explained that a Committee Substitute with a changed title had been prepared. It requires that federal power projects in which the State participates must meet the same tests as all State projects, and gives the Alaska Power Authority approval to proceed with the Bradley Lake project.

Senator Mulcahy moved the acceptance of the Committee Substitute. He then moved CSSB 769 with individual recommendations.

SB 843

Jay Nelson, Alaska Environmental Lobby, stated that some provisions of SB 843 are not strong enough to protect the people and the environment. He stressed the need for revegetation with native species, the designation as unsuitable for surface coal mining areas that are highly biologically productive, and the recognition of the fisheries value.

Mark Wittow, Department of Natural Resources, stated that the Department of Fish and Game and the Department of Environmental Conservation both have permitting requirements that protect fisheries which would still stand. He further stated that performance standards will determine the type of reclamation and the amount of habitat protection required.

Senator Sturgulewski stated that State lands on which surface mining will not be allowed should be further defined.

Phil Holdsworth, COAL, in supporting the bill, clarified the point that all State agencies will continue to work together, so there are "built in" protections.

Senator Fahrenkamp stated that SB 843 would be held until 3/24/82.

SJR 70

Senator Mulcahy stated that SJR 70 had been heard in the Fisheries Subcommittee. He moved the acceptance of the Committee Substitute. He then moved CSSJR 70 with individual recommendations.

SJR 79

Senator Mulcahy stated that SJR 79 had been heard in the Fisheries Subcommittee. He moved the acceptance of the Committee Substitute. He then moved CSSJR 79 with individual recommendations.

The meeting was adjourned at 2:35 p.m.