

ALASKA LEGISLATURE

2654

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

220

SB

78

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 7, 2003

FURTHER REFERRALS:

Date of Committee Action: 3/17/03

The FINANCE Committee considered:

SB 78

SENATE BILL NO. 78

MEDICAID FOR BREAST & CERVICAL CANCER

"An Act relating to an optional group of persons eligible for medical assistance who require treatment for breast and cervical cancer; relating to cost sharing by those recipients under the medical assistance program; and providing for an effective date."

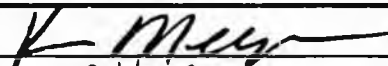
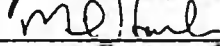




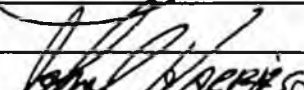
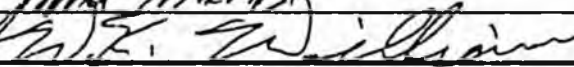
Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEC
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
HSS	1	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Meyer	✓			
	Harker			✓	
	STOTZE			✓	
	CROFT				✓
	Chenault			✓	
	FOSTER	X			
Chair: 	Harris			✓	
Chair: 	Williams	✓			

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 41
 Bill Version: SB78
 () Publish Date: _____
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction): Corrected 2/24/03

Title: MEDICAID FOR BREAST AND CERVICAL CANCER
 BRU: Medical Assistance
 Component: Medicaid Services

Sponsor: GREEN

Requester: SENATE (HESO) Component No. 2077

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	970.0	1,108.8	1,265.6	1,442.6	1,642.5	1,867.8
Miscellaneous						
TOTAL OPERATING	970.0	1,108.8	1,265.6	1,442.6	1,642.5	1,867.8

CAPITAL EXPENDITURES

CHANGE IN REVENUES (0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	687.5	785.8	896.9	1,022.4	1,164.0	1,323.7
1003 GF Match	282.5	323.0	368.7	420.2	478.5	544.1
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
TOTAL	970.0	1,108.8	1,265.6	1,442.6	1,642.5	1,867.8

Estimate of any current year (FY2003) cost: 847.3

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation continues the optional breast and cervical cancer Medicaid eligibility category, which is due to sunset June, 30, 2003. This legislation also authorizes recipient premiums and cost-sharing to the maximum extent allowed under federal law.

In FY2002 Medicaid spent \$584,364 (\$403,032 Federal funds, \$181,332 general funds) to pay for the treatment costs of 22 women diagnosed with breast cancer, 9 diagnosed with cervical cancer, and 13 with pre-cancerous cervical conditions. In future years we expect expenditures to grow at a rate typical of general Medicaid expenditures, but with only a slight increase in the number of individuals taking advantage of this eligibility category. See our assumptions on the next page.

Prepared by: Kevin Henderson Phone 465-5821
 Division: Medical Assistance Date, Time 02/21/2003
 Approved by: Joel S. Gilbertson, Commissioner Date 02/24/2003
 Agency: Department of Health and Social Services

**THE
FOLLOWING
DOCUMENT(S)
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ORIGINAL
COPIES**

FISCAL NOTE
FN #

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB7

ANALYSIS CONTINUATION

Assumptions used in making this fiscal note:

1. The number of women who have taken advantage of this program is lower than the numbers projected last year by the Division of Public Health. Part of the reason for the reduced number of eligibles is that Alaska Native women screened and diagnosed by the four tribal grantees are not applying for Medicaid. The number of anticipated recipients is expected to increase slightly. We assume a 5% increase in total recipients for each fiscal year.
2. To estimate future expenditures, we began by looking at the cost of services provided to women eligible under the breast and cervical cancer category in FY2002. The average cost per recipient in FY2002 was \$24.0 for breast cancer, \$4.9 for cervical cancer, and \$.8 for precancerous cervical conditions. However, the trend for FY 03 appears to be 45% higher than FY2002. The program was new in FY 2002, so we believe the FY2003 increase seen so far is due to the fact that current recipients have had time to move from needing treatment to actually being in or having received full treatment. We established a FY2003 base cost that is 45% higher than FY2002. Beginning with FY 2004 we estimate that Medicaid expenditures in this category will grow at a rate of 10% per year, similar to the national average growth for Medicaid spending.

The enhanced federal match rate used is 70.87%.

Funding for this bill is in the Division's base budget, however, the Governor's FY2004 Budget has not been finalized at this point.

Cost-Sharing: This legislation authorizes the department to charge recipient premiums or impose the maximum allowed cost-sharing requirements on recipients based upon household income and using a sliding fee scale. Except for the Working Disabled Medicaid Buy-In eligibility category, Federal law and regulations prohibit states from imposing a premium on "categorically needy individuals", including the breast and cervical cancer category. The department does have authority to impose "nominal" deductibles, coinsurance, or co-payments for recipients in this category. 7 AAC 43.052 already imposes the maximum allowable co-insurance payment for outpatient hospital services, the maximum \$3 co-payment for each physician visit, a \$2 co-payment for each prescription drug filled, and \$50 co-payment per day of inpatient hospitalization (up to a maximum \$200). Federal regulations allow states to require a monthly deductible amount capped at \$2 per month per family member, but prohibit states from imposing more than one type of charge at the same time. (Slight increases may be made in hospital co-payments and prescription drugs (depending upon the cost of the drug), but considering the small number of recipients the revenue would be negligible and was not estimated.) → 44

Fauleel

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Lauterbach
3/4/03

Croft

AMENDMENT 1

TO: SB 78

- 1 Page 1, lines 2 - 3:
- 2 Delete "relating to cost sharing by those recipients under the medical assistance
- 3 program;"
- 4
- 5 Page 1, line 8, through page 2, line 3:
- 6 Delete all material.
- 7
- 8 Renumber the following bill sections accordingly.
- 9
- 10 Page 2, lines 22 - 28:
- 11 Delete all material.
- 12
- 13 Renumber the following bill section accordingly.

Size of Family Unit	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$ 8,860	\$11,080	\$10,200
2	11,940	14,930	13,740
3	15,020	18,780	17,280
4	18,100	22,630	20,820
5	21,180	26,480	24,360
6	24,260	30,330	27,900
7	27,340	34,180	31,440
8	30,420	38,030	34,980
For each additional person, add	3,080	3,850	3,540

250% of FAK
 1
 2
 3
 4
 5

SOURCE: *Federal Register*, Vol. 67, No. 31, February 14, 2002, pp. 6931-6933.

The separate poverty guidelines for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966-1970 period. Note that the poverty thresholds — the original version of the poverty measure — have never had separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-D.C. guidelines for those jurisdictions or to follow some other procedure.

The poverty guidelines apply to both aged and non-aged units. The guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Programs using the guidelines (or percentage multiples of the guidelines — for instance, 125 percent or 185 percent of the guidelines) in determining eligibility include Head Start, the Food Stamp Program, the National School Lunch Program, the Low-Income Home Energy Assistance Program, and the Children's Health Insurance Program. Note that in general, cash public assistance programs (Temporary Assistance for Needy Families and its predecessor Aid to Families with Dependent Children, and Supplemental Security Income) do NOT use the poverty guidelines in determining eligibility. The Earned Income Tax Credit program also does NOT use the poverty guidelines to determine eligibility.

The poverty guidelines (unlike the poverty thresholds) are designated by the year in which they are issued. For instance, the guidelines issued in February 2002 are designated the 2002 poverty guidelines. However, the 2002 HHS poverty guidelines only reflect price changes through calendar year 2001; accordingly, they are approximately equal to the Census Bureau poverty thresholds for calendar year 2001. (The 2001 thresholds are expected to be issued in final form in September or October 2002; a preliminary version of the 2001 thresholds is now available from the Census Bureau.)

The computations for the 2002 poverty guidelines are available.

ALASKA STATE LEGISLATURE

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Session:
State Capitol
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(907) 465-6600
(907) 465-3805 Fax

SENATOR LYDA GREEN
SENATE DISTRICT G

SPONSOR STATEMENT **SB 78**

“An Act relating to an optional group of persons eligible for medical assistance who require treatment for breast and cervical cancer; relating to cost sharing by those recipients under the medical assistance program; providing for an effective date.”

Senate Bill 78, the Breast and Cervical Cancer program, removes the sunset provision of the 2001 legislation and continues treatment for women who have been participating in this program and for women who will be diagnosed in the future.

This bill gives authority to the Department of Health and Social Services to impose allowable cost sharing under federal authority for the breast and cervical cancer category. The State would then be able to work with the Federal government by submitting an amended state plan. It also provides for the implementation of a system by which these funds are collected.

I urge your support and swift passage of Senate Bill 78.

Breast and Cervical Cancer Program

Co-Pay Amounts for the history of the program

	Number of Prescriptions	Possible Co-Pay (5)	Total Co-Pay
Prescription Drugs (1)	1,219	$\times \$2 =$	\$2,438
Physician Services (2)	2,717	$\times \$3 =$	\$8,151
Inpatient Hospitals (3)	10	$\times \$50 =$	\$500
Outpatient Hospitals (4)	\$280,890	$\times 5\% =$	\$14,045
Total Amount			\$25,134

- (1) the amount of possible co-pay is \$2 per prescription.
 (2) the amount of possible co-pay is \$3 per doctor's visit.
 (3) the amount of possible co-pay is \$50 per day with a maximum of \$200 per recipient.
 (4) the amount of possible co-pay is 5% of the claim amount.
 (5) please note that this is not necessarily the amount of co-pay that WAS paid only the amount that SHOULD HAVE been paid. The Division of Medical Assistance has no way of determining the actual amount.
 (6) this data represents MMIS claims paid only information and does not include any adjustments. It is for the time period of July 1, 2001 through the end of January 2002.

House Finance Committee Vote Sheet

DATE:

3/17/03

SUBJECT:

Amend #1 SB 78

MEMBER

YES

NO

HAWKER		✓
JOULE	_____	
MEYER		✓
MOSES	_____	
STOLTZE		✓
WHITAKER	_____	
CHENAULT		✓
CROFT	✓	
FOSTER	✓	
WILLIAMS	✓	
HARRIS		✓
TOTAL:	3	5

PASSED: _____

FAILED: _____

3/5

Breast & Cervical Cancer Screening Facts

The Breast and Cervical Cancer Mortality Prevention Act of 1990, authorized the Centers for Disease Control and Prevention (CDC) to fund breast and cervical cancer screening service for low-income women. The National Breast and Cervical Cancer Early Detection Program (NBCCEDP) provides:

- Breast and cervical cancer screening services to low income or un/underinsured women.
- Diagnostic medical follow-up, case management services and assurances for medical treatment.
- Public information and education programs to increase the use of screening services.
- Education to health professionals to improve the screening process.
- Quality monitoring of the screening process.
- Surveillance and epidemiological systems.
- Linkages with key partners.

In Alaska, there are five federally funded NBCCEDP grantees:

- Alaska Dept. of Health & Social Services' Breast and Cervical Health Check (BCHC) program;
- Southcentral Foundation (SCF);
- Southeast Alaska Regional Health Corporation (SEARHC);
- Yukon Kuskokwim Health Corporation (YKHC); and
- Arctic Slope Native Association (ASNA).



Together these programs provide services to nearly 18,000 Alaskan women annually.

Breast & Cervical Health Check (BCHC) is the State of Alaska Department of Health and Social Service's breast and cervical cancer screening program. In operation since March 1995, BCHC services are now available numerous communities statewide. BCHC works closely with tribal corporation colleagues to provide a network of coverage for native and non-native women throughout the State.

BCHC has screened more than 14,000 women since 1995. Seventy cases of breast cancer, 13 cases of cervical cancer, and 446 cases of pre-cancerous cervical disease have been detected among women enrolled in BCHC.

Alaska Native women receive NBCCEDP screening services from four tribal health programs:

- Arctic Slope Native Association (ASNA)
- Southcentral Foundation (SCF)
- Southeast Alaska Regional Health Corporation (SEARHC)
- Yukon/Kuskokwim Health Corporation (YKHC)

The four tribal health programs have screened more than 17,000 women since 1995.

The Burden of Cancer in Alaska

Breast & Cervical Cancer Occurrence (1996 - 1999)				
	1996	1997	1998	1999
Breast Cancer	265	287	326	294
Cervical Cancer	27	27	31	18

State of Alaska, Cancer Registry Data 2003

Breast & Cervical Cancer Mortality (1996 - 1999)				
	1996	1997	1998	1999
Breast Cancer	53	41	49	43
Cervical Cancer	6	4	5	6

State of Alaska, Cancer Registry Data 2003

Breast & Cervical Cancer

Breast & Cervical Cancer Treatment in Alaska

The U.S. Congress enacted the Breast & Cervical Cancer Treatment Act in 2000, with very strong bipartisan support. In response to this, the Alaska State Legislature passed legislation allowing women enrolled in CDC funded programs and diagnosed with cancer to access Medicaid funds for cancer treatment.

Who is eligible for "Breast and Cervical" Medicaid?

To qualify for "Breast and Cervical" Medicaid, a woman must be:

- an enrolled client in one of the 5 CDC funded programs in Alaska (BCHC, SCF, SEARHC, YKHC, ASNA) prior to being diagnosed;
- diagnosed by a clinician in one of the 5 CDC programs;
- a resident of the US and have a Social Security Number;
- a resident of Alaska;
- age 18 - 64; and,
- have no creditable medical coverage

How long will each patient's Medicaid coverage last?

Until completion of treatment is determined by the woman's private health care provider.

What treatment services are covered?

Only clinically proven medical or surgical cancer treatments are covered. Such treatments typically include: surgery, chemotherapy or radiation therapy.

Medicaid coverage would end when:

- a woman turns 65 (and becomes Medicare eligible);
- she is no longer a state resident;
- she obtains creditable medical coverage; or
- she is no longer eligible for services from one of the screening and diagnostic programs.

FY02 Statistics on Treatment

- From July 2001 through June 2002, Medicaid paid treatment costs for 44 women with breast or cervical cancer, or a pre-cancerous cervical condition.
- The total cost to the State of Alaska was \$174,838.
- Federal funding paid \$411,279 of the \$586,118 total.
- The State of Alaska does not cover any costs for treatment of Alaska Native or Native American women under this special category of Medicaid. One hundred percent of IHS beneficiary treatment costs are paid for with federal dollars.

FY03 Treatment Projections

An estimated 69 women will qualify and need breast cancer treatment in FY03. Eleven women will need treatment for cervical cancer and 102 for pre-cancerous cervical conditions.

Breast & Cervical
Cancer

SB

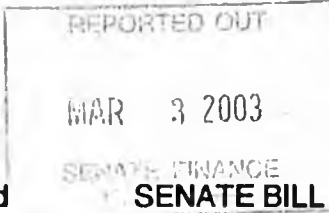
78

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/28/03



FURTHER:

DATE TURNED IN TO OFFICE: 03/03/03

Finance Committee considered

SENATE BILL NO. 78

SB 78 MEDICAID FOR BREAST & CERVICAL CANCER

"An Act relating to an optional group of persons eligible for medical assistance who require treatment for breast and cervical cancer; relating to cost sharing by those recipients under the medical assistance program; and providing for an effective date."

and recommends:

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

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
HSS	2/29			1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Adrian (T...)</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

MAR 3 2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 78
 (S) Publish Date: 2/28/03
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction): Corrected 2/24/03

Title MEDICAID FOR BREAST AND CERVICAL
CANCER

BRU Medical Assistance

Component Medicaid Services

Sponsor GREEN

Requester SENATE (HES)

Component No. 2077

Expenditures/Revenues (Thousands of Dollars)

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

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CAPITAL EXPENDITURES

CHANGE IN REVENUES (0)

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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Estimate of any current year (FY2003) cost: 847.3

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POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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Prepared by: Kevin Henderson
 Division: Medical Assistance
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-5821
 Date/Time 02/21/2003
 Date 02/24/2003

STATE OF ALASKA
2003 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

Assumptions used in making this fiscal note:

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SENATOR LYDA GREEN
SENATE DISTRICT G

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Until completion of treatment is determined by the woman's private health care provider.

What treatment services are covered?

Only clinically proven medical or surgical cancer treatments are covered. Such treatments typically include: surgery, chemotherapy or radiation therapy.

Medicaid coverage would end when:

- a woman turns 65 (and becomes Medicare eligible);
- she is no longer a state resident;
- she obtains creditable medical coverage; or
- she is no longer eligible for services from one of the screening and diagnostic programs.

FY02 Statistics on Treatment

- From July 2001 through June 2002, Medicaid paid treatment costs for 44 women with breast or cervical cancer, or a pre-cancerous cervical condition.
- The total cost to the State of Alaska was \$174,838.
- Federal funding paid \$411,279 of the \$586,118 total.
- The State of Alaska does not cover any costs for treatment of Alaska Native or Native American women under this special category of Medicaid. One hundred percent of IHS beneficiary treatment costs are paid for with federal dollars.

FY03 Treatment Projections

An estimated 69 women will qualify and need breast cancer treatment in FY03. Eleven women will need treatment for cervical cancer and 102 for pre-cancerous cervical conditions.

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/21/03

FURTHER: Finance

Date of 5-Day Notice: 2/21/03
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2.26.03

Health, Education and Social Services Committee considered

SENATE BILL NO. 78

SB 78 MEDICAID FOR BREAST & CERVICAL CANCER

"An Act relating to an optional group of persons eligible for medical assistance who require treatment for breast and cervical cancer; relating to cost sharing by those recipients under the medical assistance program; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
HSS	2/24	X		1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

Dyson
Wilken
Davis
Green
Juss

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>* [Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Bettye Davis</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHAIR:				

2-28-03

I submit the following testimony on the bills listed below to the committees listed. Please distribute this testimony for public record and copy all the Senate HESS and House and Senate FINANCE committee members. I verbally gave this same public testimony to the Senate HESS Committee on Wednesday, February 26th at 2:00 p.m., but I was informed that the transmission was inaudible in Juneau. Please also copy Senator Bettye Davis and Representative Kerttula.

SB-78 - Senate HESS Committee – Chair Dyson and Vice-Chair L. Green

✓ SB-78 - Senate Finance Committee – Chair L Green

HB-21 and HB-107 House Finance Committee – Co-chairs Harris and Williams

My name is Carla Williams and I am the president of Alaska Breast Cancer Advocacy Partners and the state field coordinator for the National Breast Cancer Coalition. ABCAP collected over 1200 signatures in the last few weeks supporting the extension of the breast and cervical cancer treatment program. Over the past two years, many people of Alaska (state legislators, governors, U.S. Senators, and people from all walks of life) have worked together to first, get the program into reality and second, to make sure that the program does not end in June 2003. I thank you all. I'm pleased that the legislature is moving a bill forward toward this effort.

I think that people have been working together to pass legislation. Has the public given all the information they need to make a sound decision? I believe that is desirable.

It is my understanding that SB78 provides the language necessary to make future changes to the breast and cervical cancer treatment program at the discretion of the state without having to go through public scrutiny. It is not a secret that President Bush's recent budget asks for capping federal Medicaid spending and giving broad flexibility to states to cut Medicaid eligibility, benefits, provider reimbursements, along with services in rural communities. Budget deficits are a big problem for states across the U.S. and the federal changes will allow the states to get some relief by tapping into Medicaid and Medicare. If, or when, those federal restrictions are lifted, and I predict they will be lifted sooner than later, states will be given the green light to move forward in their efforts to undermine the original intent of this program, which is to provide financial assistance to women who cannot afford breast and cervical cancer treatment after being diagnosed with cancer through the screening program. Whether our state legislators become the stewards of keeping this program alive and vital, time will tell. Whether people who need these services will be either eligible for the program or able to afford the costs, again, time will tell.

Although co-payments and a sliding scale may make sense to the average person today, I predict that this program will look a lot different in a few years. Since these are only predictions, I cannot accurately know what the future holds for passing SB78, except that by passing this bill, the program will not end this June and I think people, for now, are satisfied with that concept. Thank you for giving me this opportunity to speak.

*Carla Williams, 13001 NORAK PLACE
907-345-8060 Anchorage, AK 99516*

SENATE FINANCE COMMITTEE

SIGN-IN

SB 78-MEDICAID FOR BREAST & CERVICAL CANCER

NAME: Elmer Lindstrom Subject/Bill No: SB 78

Co./Dept./Title: Special Assistant Phone: 465-1613

Address: Dept. Health & Social Services Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SB

79

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 79
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Extend Alaska Minerals Commission BRU Community Assist & Econ. Dev. (405)
Component Community & Business Development
Sponsor Senator Stevens
Requester Senate Resources Component No. 2486

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2003	FY 2007	FY 2008	FY 2009
Personal Services						
Travel	8.0	8.0	8.0	8.0	8.0	8.0
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	9.5	9.5	9.5	9.5	9.5	9.5

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	9.5	9.5	9.5	9.5	9.5	9.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	9.5	9.5	9.5	9.5	9.5	9.5

Estimate of any current year (FY2003) cost: 9.5

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would extend the existing Alaska Minerals Commission for an additional 10 years. Costs are expected to continue at current levels, \$9,500 per year. These costs consist of travel by Commission members to attend Commission meetings (\$8,000) and publication of the statutorily required annual Minerals Commission Report (\$1,500).

Prepared by: Gene Kane, Acting Director
Division: Community & Business Development
Approved by: Edgar Blatchford, Commissioner
Agency: Department of Community & Economic Development

Phone 907-269-4580
Date/Time 2/27/03 3:12 PM
Date 2/27/2003

Senator Ben Stevens

Senate Majority Leader



Sponsor Statement

Senate Bill 79, "An Act extending the termination date of the Alaska Minerals Commission."

The Alaska Minerals Commission is set to expire on February 1, 2004. SB 79 seeks to extend the Commission until the year 2014.

The Alaska Minerals Commission was first created in 1986 and charged with making recommendations to the Governor and Legislature on ways to mitigate constraints on the development of minerals in Alaska. The commission consists of 11 members. Each member must have at least five years experience in the minerals industry. Five members are appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House. At least one member must reside in a rural community.

The Commission must report its recommendation to the Governor during the first ten days of the regular session.

The Alaska Minerals Commission has had numerous recommendations implemented since 1987. Recommendations that were implemented include:

- Passage of Alaska Minerals Policy Act (1988)
- Funding for airborne geophysical surveys (1992-2002)
- Creation of a task force for RS2477 trail inventory (1993)
- Assertion of RS2477 rights-of-way (1997)
- Legislative Resolution 31 was passed opposing International Parks, World Heritage Sites, and Marine Biosphere Reserves in Western Alaska, and supporting the federal American Lands Sovereignty Protection Act (1997)
- Extending terms of permits when legal impediments prevent use (1994)

Senator Ben Stevens
State Capitol
Juneau, Alaska 99801
907-465-4993
Fax: 907-465-3872

Senator Ben Stevens

Senate Majority Leader



Memorandum

Date: 3/28/03

To: **Representative Bill Williams, Co-Chair**
House Finance Committee

Representative John Harris, Co-Chair
House Finance Committee

From: **Senator Ben Stevens**

Subject: **SB 79 – Extending the Alaska Minerals Commission**

The Alaska Minerals Commission was created in 1986 with the charge of making recommendations to the governor and legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals in the state.

The Minerals Commission is set to expire on February 1, 2004. Senate Bill 79 seeks to extend the Commission until the year 2014.

As sponsor of SB 79, I respectfully request a hearing in the House Finance Committee at your earliest convenience. Please contact my aide, Phelan Straube, or me if I may provide any additional information.

Attachments: Senate Bill 79
Fiscal Note
Sponsor Statement
Letter from Commissioner Edgar Blatchford
Letter from Rich Heig, President of the Council of Alaska Producers
Alaska Minerals Commission 2003 Report

Senator Ben Stevens
State Capitol
Juneau, Alaska 99801
907-465-4993
Fax: 907-465-3872

Frank H. Murkowski, Governor

Alaska Department of Community and Economic Development

Office of the Commissioner

P.O. Box 110800, Juneau, AK 99811-0800

Telephone: (907) 465-2500 • Fax: (907) 465-5442 • Text Telephone: (907) 465-5437

Email: questions@dced.state.ak.us • Website: www.dced.state.ak.us/

28 February 2003

The Honorable Ben Stevens
Alaska State Senate
State Capitol, Room 119
Juneau, AK 99801-1182

FEB 28 2003

Dear Senator Stevens:

In 1986, the Legislature established the Alaska Minerals Commission (AMC). The Commission recommends to the Governor and Legislature ways to mitigate constraints, including governmental constraints, on the development of minerals.

The Governor, President of the Senate, and Speaker of the House appoint AMC members. Current membership is representative of placer, hard rock and coal mining industries from diverse areas of the state. Each year since 1987, the Commission has held public meetings in Fairbanks and Anchorage to develop recommendations put forth in an annual report.

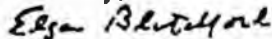
Recommendations from the Commission have ranged from those that come from family-owned placer mines, to recommendations impacting international mining operations. A sampling of successful Commission recommendations include:

- Changes in the Water Quality Standards
- Funding of Airborne Geophysical Surveys
- Accelerated Transfer of State Selected Lands
- Exemption of Minerals from In-Place Taxation
- Changes to the Alaska Mineral Policy Act (more flexible work hours for underground miners)
- Changes to the Exploration Incentives Act

Significant constraints remain to be addressed in order for Alaska's mining industry to reach its growth potential. The AMC has demonstrated itself to be an effective body in making positive changes to support on-going mineral development in Alaska. Such actions are consistent with the Murkowski Administration's promise to work toward opening up new areas to mining through providing access to major mining projects, reducing permitting time, lowering development costs, and encouraging value-added processing of minerals.

Thank you for sponsoring legislation to reauthorize the Alaska Minerals Commission. We look forward to continuing our partnership with the Alaska Minerals Commission.

Sincerely,



Edgar Blatchford,

Commissioner

Department of Community & Economic Development

"Promoting a healthy economy and strong communities"



Council of Alaska Producers

P.O. Box 22653 Juneau, Alaska 99802

March 12, 2003

Senator Ben Stevens
State Capitol, Room 119
Juneau, Alaska 99801

Dear Stevens:

On behalf of the Council of Alaska Producers, I would like to thank the sponsor for introduction of SB 79, a bill to extend the term of the Alaska Minerals Commission. Although I am relatively new to Alaska, having been appointed in October 2002 to the position of General Manager of the Greens Creek Mine, the previous manager briefed me well on the track record of the Minerals Commission. The Minerals Commission has demonstrated the ability to produce a concise annual report that serves to focus the legislative and administrative branches on ways to remove constraints on mineral development in Alaska. The Commission draws on the experience of a wide cross-section of industry professionals and completes its work and prepares the report at minimal cost to the State.

I have observed this myself in the 2003 Minerals Commission report, which sets forth a number of issues that need to be addressed and which would help improve the business climate for the operations of our Council of Alaska Producers members. Our organization certainly supports passage of SB 79, so that we can continue to capitalize on the potential of the mining industry in Alaska.

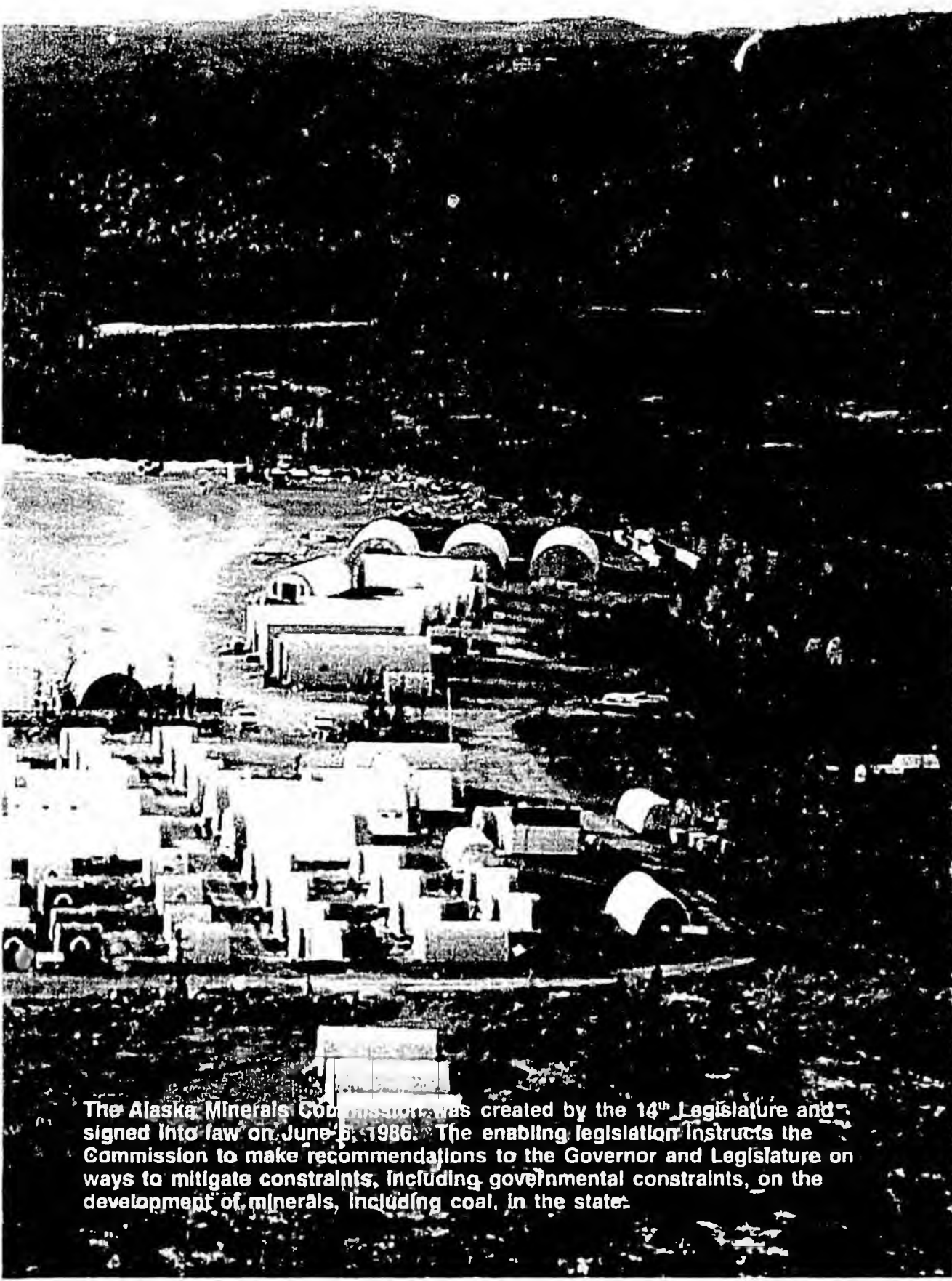
Thank you,

Rich Heig, President
Council of Alaska Producers

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

REPORT OF THE 2003

Alaska Minerals Commission



The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 5, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

ALASKA MINERALS COMMISSION

JANUARY 2003

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STAFF

Frankie Pillifant	Development Specialist, Mining & Minerals Alaska Division of Community & Business Development P.O. Box 110804, Juneau, Alaska, 99811-0804 Phone (907) 465-5463, Fax (907) 465-3767 E-mail Frankie_Pillifant@dced.state.ak.us
Dr. Dick Swainbank	Development Specialist, Mining & Minerals Alaska Division of Community & Business Development Unit 7, 3677 College Road, Fairbanks, Alaska 99709 Phone (907) 451-3050, Fax (907) 451-3053 E-mail swainbnk@ptialaska.net

FOREWORD

The Alaska Minerals Commission again wishes to thank the Governor and the Legislature for implementing some of our recommendations during 2002. Highlights include substantial positive proposed changes in the Water Quality Standards, funding to study assumption of water quality primacy, continued funding of geophysical surveys and AMEREF, and accelerated transfer of State-selected lands. Partly as a result of the responsive actions of the Governor and the Legislature over the last few years, mining development opportunities are improving in Alaska as demonstrated by the recent growth in the industry.

However, there are still significant obstacles to overcome for Alaska to reach its growth potential and to gain a reputation as a predictable and favorable place to do business.

The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

The Commission has presented reports to the Governor and Legislature annually since January 1987, and is authorized to do so until January 2004. Commission members are appointed by the Governor, the President of the Senate, and the Speaker of the House. The current members are representatives of placer, hard rock, and coal mining industries and come from diverse areas of the state.

During 2002, the Commission held meetings in Fairbanks and Anchorage. The recommendations in this report are the result of input at these meetings. All Commission meetings are open to the public, and members encourage comments from all interested parties at any time.

Following the list of recommendations in the executive summary, this report contains background information, or "findings", on each issue, followed by the related recommendation. These have been separated into Part A, which deals with issues mainly of State concern, and Part B that includes federal issues affecting the State that can be influenced by State participation.

On behalf of the members of the Commission, I would like to express our appreciation to those members of the public, the Alaska Miners Association, the Resource Development Council, and the many government agencies and private organizations that contributed to the preparation of the report. The Commission wishes to thank Commissioner Deborah B. Sedwick of the Department of Community and Economic Development and Dick Swainbank and Frankie Pillifant of the Division of Community & Business Development who have provided excellent administrative and professional support to the Commission.

Irene Anderson, Chair

**ALASKA MINERALS COMMISSION
2003 REPORT TO THE GOVERNOR
AND ALASKA STATE LEGISLATURE**

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(www.dced.state.ak.us/cbd/minerals/mining.htm)

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EXECUTIVE SUMMARY

CURRENT RECOMMENDATIONS

The commission encourages the Governor and Legislature to act on the following recommendations in 2003:

- Eliminate frivolous litigation by limiting "public interest litigant" status;
- Increase the efficiency of mine project permitting;
- Update water quality standards;
- Assist in infrastructure development that benefits mining and other industries;
- Resolve land tenure, navigability and right of way access issues;
- Acquire baseline geological and environmental knowledge statewide;
- Promote industry education through support of relevant university programs and the Alaska Minerals & Energy Resource Education Fund.

INDUSTRY OVERVIEW

The mineral industry is one of three base industries of Alaska to show real growth since 1991. The industry currently has a gross value of approximately \$1 billion dollars, a milestone first reached in 1996. By virtue of several cornerstone operations, the industry has maintained this respectable level despite challenging economic conditions and depressed commodity prices. In the past year, exciting new discoveries have been made, the price of gold and platinum-group elements has risen, and a general feeling of optimism is starting to develop. Unfortunately over the same period the price of copper and zinc has fallen, and taken a toll on the base metal mines in Alaska.

However, while mining has shown growth over the past decade, the industry has been static in recent years. Exploration for new mines has diminished. Smaller hard-rock operations are absent, and placer mining is stagnant. Other countries, states, and provinces continue to surpass Alaska in the global competition for exploration dollars.

Red Dog, Fort Knox, Greens Creek, Usibelli Coal, Illinois Creek, and Anchorage Sand & Gravel are outstanding operations that contribute significantly at the local level. These mines are providing rewarding, long-term, high-paying careers in urban and remote areas alike. These operations have a profound, positive impact on their respective local communities, and serve as shining examples of what could be achieved in other regions of the state.

As the premier producing mine in the state, Red Dog continued to improve its efficiency in 2002 through its Mill Optimization Project, which translated to increased production through superior recovery and product grade. The increased production has been helpful in offsetting some of the financial impact related to decreased zinc prices, however the impact remained significant with a loss of \$10 million in the third quarter of 2002.

Three development projects, Pogo, Donlin Creek, and Kensington are poised to become viable mining operations in the near future.

Activity at the Pogo gold deposit near Delta Junction included surface geotechnical drilling and definition drilling of the lower ore zone. The major focus of this project in 2002 was the permitting process and the development of an Environmental Impact Statement.

Exploration at Donlin Creek has resulted in a dramatic expansion of the size and grade of the gold resource. The project is on the verge of becoming a major mine. This development has the potential to change the face of southwest Alaska, bringing prosperity and promise to a depressed region desperate for alternatives. Transportation infrastructure and energy development are key.

A revised mining plan has been submitted at the Kensington project in southeast Alaska, which may allow the project to proceed to development.

Grass roots exploration programs were limited, and largely reduced in scope from previous years. One bright spot was the area northwest of Iliamna, where several significant copper-gold prospects were discovered. Drill programs for gold and silver were reported near Tok, Northway, Rock Creek north of Nome, and in the Wulik Valley on the north flank of the Brooks Range. In southeast Alaska exploration continued for platinum-group elements at Union Bay and Duke Island, and for polymetallic targets on Woewodski Island. On the south flank of the Alaska Range, exploration for platinum-group elements was curtailed due to continuing uncertain land status. The state must do what it can to finalize land conveyance, so that land tenure in the state is clear to developers.

The State Division of Geological & Geophysical Surveys continued to do outstanding work on a minimal budget. Airborne geophysical surveys were flown at Council near Nome, and the Bureau of Land Management contracted for surveys within the Denali Block and at Sleetmute. Geologic mapping continued in 2002 in the Salcha and Goodpaster River areas that had airborne surveys flown in past years. Alaska continues to lag far behind the remainder of the continent in geological knowledge of its land base. Indeed, many third world countries supercede Alaska in this regard. The importance of baseline data acquisition for the state cannot be overstated.

The mining industry in Alaska has maintained the status quo over past years in the face of challenging conditions. Several development projects, if brought to fruition, will provide outstanding benefits in remote regions, and formulate the critical mass the industry requires to sustain itself over the long term. Given the proper support, the industry has the ability to make a tremendous difference in Alaska.

FINDINGS AND RECOMMENDATIONS

PART A: ISSUES REQUIRING STATE ACTION

1) REGULATORY REFORM

1a) LITIGATION REFORM

FINDING: A critical component to resource development in the State of Alaska is insuring that development projects, once permitted by the appropriate State Agencies, can proceed without delay. Unfortunately, groups opposed to development routinely file litigation with the sole objective of either preventing or delaying permitted development. Often, the basis for the litigation is without merit. Under Alaska's current law, such groups, regardless of financial resources or membership composition, can routinely qualify as "public interest litigants", in which case there is absolutely no financial downside to them if they lose the litigation. The net result is that there is no disincentive to these groups not to pursue litigation. As a consequence, the State of Alaska as well as industry and developers are forced to defend themselves in lengthy and costly litigation with little chance of recovering any costs or attorney fees even when they prevail in the litigation.

The groups that regularly oppose resource development are not simply concerned citizen groups but more often special interest groups supported financially by national and/or international organizations whose stated mission is resource preservation. The result of these systematic and orchestrated lawsuits filed by purported "public interest litigants" is inhibiting development by escalating development costs, both in terms of real dollars spent on litigation and lost dollars due to delays. Modifying Alaska's existing rules and regulations for proposals where public input and administrative appeal was afforded by eliminating "public interest litigant" status in Administrative appeal decisions and awarding fees and costs to the prevailing party in litigation ensures a level playing field. Likewise, requiring disclosure of funding sources by those who seek to qualify as litigants and/or who seek to file an Administrative Appeal allows those defending the litigation to know the identity of those who are actually supporting the litigation and the amount of that financial support.

Modification of Alaska's existing "public interest litigant" rules and regulations is not aimed at preventing litigants from pursuing administrative appeals, rather the intent is one of fundamental fairness — ensuring that the identity of those who initiate the litigation are known and that the potential negative consequences of such litigation are borne equally by all parties to the litigation. The objective is not to inhibit meritorious litigation, but rather to inhibit frivolous litigation by ensuring that there is a consequence to those who file and support such litigation.

If responsible resource development is to be promoted and achieved, it is imperative that once development projects are permitted they are not delayed, by individuals, or entities that choose to pursue frivolous litigation. Modifying Alaska's existing rules and regulations regarding "public interest litigants" is critical to promoting and achieving responsible resource development in the State of Alaska.

THE COMMISSION RECOMMENDS THAT:

- 1a.1) Public Interest Litigant Status needs to be limited. The Legislature should modify existing State Statutes to specifically provide for any party bringing a civil action seeking judicial review of Administrative Agency decisions, in which they were afforded an opportunity for public input and administrative appeal, not be awarded "public interest litigant" status. Furthermore, the prevailing party in such civil action shall be entitled to an award of attorney fees and costs as in other civil actions.
- 1a.2) Funding Sources need to be disclosed. The Legislature should modify existing State Statutes to require that a condition of obtaining litigant status and/or of filing an Administrative Appeal, under regulations, is the initial and supplemental disclosure of the identity of those who provide funding to the entity who seeks litigant status and/or initiates an Administrative appeal and the amount of such funds during the past two years and during the term of the Administrative Appeal.

1b) PERMIT EFFICIENCY

FINDING: A key element in marketing Alaska as an attractive and competitive place to do business is the ability to process permit applications in a responsible, consistent and expeditious manner.

In the 2001 legislative session, funding was provided for the Alaska Department of Environmental Conservation (ADEC) to reconstitute the qualified core of water quality permitting staff. Equally important to adequate funding, the agencies need the flexible management tools necessary to provide responsive, effective, and efficient management of permitting issues.

Permitting delays negatively impact business in Alaska. Delays are often due to staffing shortages which creates backlogs for industry project permit review.

To help resolve this problem, ADEC has recently utilized the Department of Natural Resources (DNR) authority for third party contracting through the Large Mine Permit process, and has contracted directly with third party contractors to assist with permit review. ADEC is also planning to select one or more individuals/firms that would be available on-call to provide technical assistance to a permitting team regarding risk assessments and monitoring requirements for National Pollutant Discharge Elimination System (NPDES) discharges, and mixing zones for placer miners.

Supplementing permanent staff during permit development is a positive step that will allow agencies to respond more readily to the intermittent demands associated with industry growth. Further, it will support the limited number of permanent staff personnel via access to the varied technical and scientific expertise required for responsible permitting.

In some circumstances, permitting delay has been characterized by industry as "procedural duress." Industry recognizes that permitting review is an iterative process through discussion and supplementing of relative information, public review, comment and response to comment. However, an unreasonable extension of any of these elements can lead to costly and unnecessary delay. At present there are instances where State requests for additional information, and subsequent time extensions, appear to be based on a partial or cursory review. This results in additional time delay through multiple information requests. Further concern is often

raised regarding extension of public review and comment periods. This practice is detrimental to the agency, to the industry, and ultimately to economic development within Alaska, potentially leading to the loss of millions of dollars in revenue, and related monetary losses in taxes and royalties.

Permitting agencies need to ensure that the permitting process is not unnecessarily extended. Initial permit review should result in a single and complete list of information deficiencies. Additional requests for information should be limited to questions arising out of new information.

The Alaskan industries, agencies, Administration, and Legislature can work together to provide responsible and reliable permitting that ensures the protection of the environment and a sound future. For this to happen, we cannot be complacent in trying to improve permitting efficiency through funding alone. All of the recommendations provided must occur in concert for Alaska to fulfill its potential for sustainable and attractive resource development.

THE COMMISSION RECOMMENDS THAT:

- 1b.1) The Administration must continue to aggressively search for and find means to accommodate the use of third-party contractors who will work under the core managers to provide permit development support on an as-needed basis and extend these efforts to all types of environmental and resource permitting. The Legislature needs to encourage and support the Administration in this effort.
- 1b.2) The Legislature should require a periodic permitting status report accounting for agency staff and management.
- 1b.3) Salary scales for public workers must be improved relative to the private sector in order to retain competent staff.

1c) WATER QUALITY STANDARDS

FINDING: When municipal water treatment plants or industrial projects require water discharge permits, the Department of Environmental Conservation must insure that the proposed discharge will meet the State of Alaska water quality standards for various parameters. Due to the rapidly advancing science on both the potential environmental effects of these parameters and the changing technology for detecting the very low concentrations, the most appropriate numerical criteria for these parameters keeps advancing.

In 1999, the U.S. Environmental Protection Agency (EPA) approved a new list of water quality criteria that updated many of the numerical criteria. The EPA also responded to the environmental science that had developed over the years and replaced the old total recoverable values with new dissolved criteria.

In recognition of this advancing science, the Department of Environmental Conservation proposed revisions to the Alaska water quality standards on August 2, 2002. The public comment period on these proposed changes was completed in October, 2002. These revisions need to be adopted by the State immediately, and forwarded to the EPA for review and approval.

THE COMMISSION RECOMMENDS THAT:

The Governor should instruct the Department of Environmental Conservation to adopt the revisions to the Alaska water quality standards as proposed on August 2, 2002.

1d) MIXING ZONES

FINDING: State water quality regulations that became effective in November 1997 contain a prohibition against mixing zones in anadromous or resident fish spawning areas. This language makes it more difficult to consider site specific conditions, such as the productivity of the spawning area compared to the potential benefit of a municipal waste treatment plant or industrial project that might require a mixing zone. Without flexibility in the regulation, many projects that could significantly improve the health and welfare of people throughout Alaska may be precluded due to the widespread presence of spawning fish, including resident fish. Prior to promulgation of the latest mixing zone regulations, the Alaska Department of Environmental Conservation (ADEC) considered language that could have allowed mixing zones, if either the discharge had no adverse effect on spawning or if all reasonably anticipated adverse impacts were mitigated to the satisfaction of the Department of Fish and Game (ADF&G). This type of discretionary flexibility needs to be incorporated in the regulations so future projects that may be beneficial are not automatically prohibited.

THE COMMISSION RECOMMENDS THAT:

The Governor should direct the Alaska Department of Environmental Conservation and the Alaska Department of Fish & Game (ADF&G) to work with user groups to develop mixing zone regulations that will, at the department's discretion, authorize mixing zones in spawning areas if:

- (a) The discharge is not reasonably anticipated to adversely affect the capacity of the area to support present or future spawning activities; or
- (b) The discharge is reasonably anticipated to adversely affect the capacity of the area to support present and future spawning activities and the ADF&G has approved a plan to mitigate all reasonably anticipated adverse impacts.

1e) ALASKA'S CLEAN WATER ACTIONS

FINDING: In 2001 the Alaska Division of Governmental Coordination (ADGC) began an initiative called the Alaska's Clean Water Actions (ACWA). Members of the Commission expressed concern that ACWA was a new state regulatory program without basis in Alaska law. Further, members were concerned that this 'new program' overlapped other agency programs as well as creating new obligations. Industries or other users of water could be seriously and adversely affected if their business-based use of waters, such as placer mining, became restricted via the ADGC listing of water bodies as "polluted" or "at risk".

Through meetings with ADGC, other resource agencies, miners, and recently with the Minerals Commission, it was clarified that the ACWA initiative is a collaboration among the resource agencies. The collaboration is important to prioritize its water based management functions, to better align the priority work of the state agencies, and to use a ranking mechanism to prioritize

external grant or contract funded in-water field projects. In addition, the agencies report that they refined their ranking and decision making process in response to concerns raised by Commission members about how waters get listed or de-listed as "polluted" or "at risk". Although, the Commission remains cautious until the day-to-day practice becomes more evident, it appears ADGC and the other resource agencies have been responsive to concerns that have been raised. If ACWA actually works as the agencies intend - resulting in cohesive prioritization of water related functions among Fish & Game, Natural Resources and Environmental Conservation - the Minerals Commission would applaud this effort as long overdue efficiency building within state government.

THE COMMISSION RECOMMENDS THAT:

The Governor's office conduct a review of the Alaska's Clean Water Action initiative to ascertain if it can deliver on the promises the Alaska Minerals Commission heard from the agencies. Those promises were to improve efficiency and build a common agreement on the water management priorities of the resources agencies and Alaska Division of Governmental Coordination.

2) ACCESS & INFRASTRUCTURE

The lack of infrastructure, including roads, airports, and power transmission networks, increases the costs of exploration, development, and operation of mineral deposits and limits the potential for this industry to grow and help diversify Alaska's economy.

Many regions of Alaska have experienced significant improvements in their economic opportunities and standard of living when infrastructure improvements were completed.

If there is to be no development in the extensive areas of Alaska that have already been set aside as parks and refuges, then the other areas of Alaska that are not designated as wilderness constitute the land base that must support our society. Even though these non-wilderness areas are often beautiful or wild in their own right, they were not the crown jewels that justified prior withdrawal. Infrastructure development in these areas must be supported and projects that have the potential to significantly enhance the viability of local communities should be encouraged first.

2a) ROADS TO RESOURCES

FINDING: Many of the major mineral and coal deposits in Alaska are "stranded" because there is no road access to the major rivers or to tidewater. The last major road built in the state was the 52-mile road from the Red Dog Mine to the DeLong Mountain Transportation System port near Kivalina in 1988.

Notable areas that could benefit from road access include the Ambler mineral belt, the north-west Arctic and Beluga coalfields, the area around and west of Iliamna, the Flat-Iditarod area, and the Goodpaster mining district.

Although Alaska Statutes AS 19.30.020 and 19.30.030 address development access roads, the funding available, even if inflation adjusted, would probably not even cover the costs of permitting.

During the next few years it is possible that significant funding for access improvement might be available through GARVEE (Grant Anticipation Revenue Vehicle) bonds, the Denali Commission, and special federal appropriations similar to those used in Appalachia.

THE COMMISSION RECOMMENDS THAT:

The Governor direct the Department of Transportation & Public Facilities to prepare a prioritized list of potential "Roads to Resources", and investigate mechanisms whereby funds can be made available in a long-term program to link potential resource development to tidewater.

2b) RESTRICTING THE USE OF MINING AIRSTRIPS

FINDING: In many remote mining camps, the only feasible summer access is by use of an airstrip on, or adjacent to, the mining operation. Unauthorized use of these strips, often by commercial operations, can result in potentially unsafe conditions, and the attendant threat of liability, both to the miner and to the State.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should direct the Division of Mining, Land & Water to amend the mining regulations so that when an airstrip is required for access to a specific mining operation, the Plan of Operations will allow the permit holder to restrict the use of the airstrip.

2c) POWER SUPPLIES

FINDING: Major mines require substantial power supplies, in the order of 20-50 megawatts (Mw). Any additional processing will increase that demand manyfold.

Many remote mines choose to generate their own power using modular diesel generating sets, but as evidenced by Red Dog, the permitting of on-site generation can become a limiting factor.

An alternative would be to use mines as a "base-load" to justify extending interties and/or building new off-site power plants to slowly extend power-by-wire to many of the remote villages that presently rely upon the Power Cost Equalization funds to reduce the high cost of electrical energy.

Activity at Donlin Creek, Shotgun, and Pebble Copper might justify an intertie from the Cook Inlet area to Bethel and the villages of the Yukon-Kuskokwim Delta. Likewise in southeast Alaska planned interties from Tyee to Ketchikan and from Juneau to Hoonah could provide affordable power to mines and communities.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should continue to support the Alaska Industrial Development & Export Authority/Alaska Energy Authority, Alaska Village Electric Cooperative, and the Southeast Intertie in extending electrical grids into areas where mineral development is occurring or anticipated.

3) STATE'S RIGHTS ISSUES

These issues have been separated because although they are also about ownership and access, both of which are fundamentally important in mineral investment decisions, two of them are not exclusively Alaskan issues, and allow for cooperative efforts with other states at the federal level.

RS 2477 trails may offer the only access across lands in Alaska where ownership patterns have changed and become more complex since statehood. Similarly, navigable waterways can provide the cheapest form of transportation for some mineralized areas, and some are inherently important gold placer deposits.

Western States have as much of a vested interest in RS 2477 access as does Alaska, and all states have an interest in ownership of the riverbeds and watercolumns of navigable rivers and lakes.

3a) RS 2477 TRAILS

FINDING: In 1993 the Legislature appropriated funds for a task force to create an RS2477 trail inventory. Since 1993 there has been no funding to pursue Alaska's RS2477 trails through 'quiet title' action. The Alaska Division of Land has researched 1,950 trails proposed as RS2477 rights-of-way. Of these, 620 routes appear to qualify, about 250 need more information, and the remainder may not qualify due to circumstances such as lack of evidence, duplication of existing rights-of-way, or failure to meet the requirements of the RS2477 law.

The State has achieved Quiet Title to the Harrison Creek – Portage Creek Trail (RST 8) in the Circle Mining District. Because the original trail has been moved many times to accommodate active mining since 1976, (the deadline for identification of existing rights-of-way), the State has entered into a consent decree accepting a mutually agreeable 60-foot right-of-way to substitute for abandonment of portions of the existing trail.

This was one of 11 of the 620 "Qualified" trails that was "Certified" as a test case, and was selected for litigation because it had the broadest potential for setting precedent.

The Department of Law and the Division of Mining, Land & Water require funds for this legal effort to file "quiet title" actions in court to determine the validity of the routes.

THE COMMISSION RECOMMENDS THAT:

- 3a.1) The Legislature should fund a multi-year, multi-agency Capital Project of \$300,000 annually for the Division of Mining, Land & Water to work with the Department of Law and other agencies to aggressively pursue precedent-setting "quiet title" actions, and to preserve the State's rights.
- 3a.2) The Governor should aggressively assert "quiet title" to the routes with the best documentation. Furthermore, the State should assert an access route pursuant to Title XI of the Alaska National Interest Land Conservation Act to test the process and set a precedent.

3b) NAVIGABILITY

FINDING: State ownership of the beds of navigable waters is an inherent attribute of State sovereignty protected by the United States Constitution.

The State of Alaska owns all watercolumns and the land under most navigable waterways in Alaska. The Submerged Lands Act of 1953, the Alaska Statehood Act of 1958, and the Alaska State Constitution establish State ownership of watercolumns (actual water that is in a lake or river) and shorelands (the beds of navigable rivers). The courts have defined navigable waters as those used or susceptible to use for travel, trade, and commerce at the time of statehood." (Emphasis added).

This interpretation would include not only the obviously navigable waterways such as the Yukon, Kuskokwim, Tanana, Fortymile, and Kobuk Rivers, but many smaller rivers used for travel. Some of the rivers that could be considered navigable, such as Birch Creek and the Fortymile River, contain important placer gold deposits.

While title to the beds of navigable waters vested in the state at Statehood, the federal courts have only ruled on the navigability of 13 waterways in Alaska. Alaska faces two types of legal hurdles in establishing its ownership of lands under navigable waters. The first is to determine what rivers and lakes are navigable under federal law. The second is to establish that the United States did not defeat the state's title to navigable waters through pre-statehood federal reservations. The state has used the court action (quiet title) to address both of these hurdles by defining the types of rivers and lakes that are navigable under federal law, and to determine whether or not certain pre-statehood federal reservations defeated the state's title.

In 1980, the State established a comprehensive navigability program within the Department of Natural Resources (DNR). This program was designed to respond to federal land conveyances and land management activities under the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act. The basic purpose of the program was to protect the public rights associated with navigable waters, including the State's title to the submerged lands. The program also included monitoring of federal land conveyance and management programs to identify navigability disputes, seeking cooperative resolution of navigability problems through negotiation and legislation, and preparing for navigability litigation.

Budget cuts have greatly reduced the ability of State agencies to respond to navigability issues, and to pursue assertions of State ownership of navigable waters.

THE COMMISSION RECOMMENDS THAT:

The Legislature should make funding available to reinstate a centralized, systematic navigability program within the Department of Natural Resources. Additionally, funding should continue to be made available to the Department of Law to support any "quiet title" actions necessary to secure ownership of submerged lands. Further, the state and federal governments should establish more efficient methods for determining what waterbodies are navigable and therefore are state owned.

3c) EXPEDITED LAND TRANSFERS

FINDING: Because of the high mineral potential proximal to existing transportation, in 1994 the Commission recommended that the State should seek expedited transfer of State-selected lands along the Denali Highway.

Subsequently, about 3,000 mining claims have been staked in this area during the last five years for the copper, nickel, and platinum-group element potential, and over \$3 million has been spent in exploration, including detailed airborne geophysical surveys and limited drilling. However, because of the uncertain ownership of State-selected land, the companies involved cannot justify further expensive evaluation of the area.

On October 4th, 2000, the Division of Mining, Land & Water (DMLW) recognized the potential of this block, and requested that 235,000 acres of State-selected land between the Richardson Highway and the Maclaren River be added to the Land Conveyance Priority List (CPL). In June 2002 the State received final Tentative Approval (TA) to 6 of the 10 Townships selected, and the TA to the final 4 Townships was received in December, 2002.

Furthermore, on September 9, 2002, a request was made to add an additional 25 Townships to the CPL. These 576,000 acres are predominantly north of the Denali Highway between the Maclaren and Susitna Rivers.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should direct the Division of Mining, Land & Water to aggressively pursue expedited transfer of State-selected lands along the Denali Highway where there is demonstrated potential for mineral development.

4) DATA ACQUISITION

Many potential investors in Alaska's mineral industry are discouraged by the lack of detailed geologic information, and choose to invest in areas that have more public data to guide grassroots exploration. Those companies that have been successful in exploration, and identified prospects worthy of development, find that they are expected to fully define the baseline data of the whole area surrounding their discovery, because no such database exists.

4a) GEOPHYSICAL AND GEOLOGICAL MAPPING

FINDING: Since 1993, State-funded airborne geophysical surveys have covered approximately 8,500 square miles of the State of Alaska's 162,500 square mile land entitlement, at a total cost of \$ 3.69 million. Additional funding has been invested by the State to complete the geologic mapping on the ground that is necessary to allow interpretation of the airborne surveys.

An additional \$1.57 million has been invested by the Bureau of Land Management (BLM) and other entities to survey about 3,800 square miles of predominantly federal land in the state.

During this same period, the mining industry has invested \$367 million in exploration in the state, and has staked thousands of new claims based on the results of the surveys.

This increased activity was the intent of the surveys and will accelerate discovery of new Alaskan mineral deposits. However, with a land base of 162,500 square miles, much of it chosen for its mineral potential, it will take the State of Alaska another 150 years to survey its land endowment at the present rate of funding.

The costs for the surveys have increased in recent years due to consolidation in the industry, and increased fuel and insurance costs.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should invest \$5 million per year (approximately 21% of what industry spent on exploration in 2001) for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.

4b) BASELINE DATA

FINDING: Water quality regulation in Alaska is growing increasingly complex. Often, the Alaska Department of Environmental Conservation (ADEC) is required to make decisions about water quality regulations without Alaska-specific data. Many Alaskans recognize the need to develop sound environmental baseline information. This research should extend to development of appropriate aquatic life criteria for acute and chronic toxicity under Alaska conditions.

THE COMMISSION RECOMMENDS THAT:

The Governor should direct the Alaska Department of Environmental Conservation to work with industry to develop priorities for basic research on topics important to Alaska, such as total dissolved solids and pH.

5) REGIONAL ECONOMIC DEVELOPMENT

FINDING: In many regions of Alaska, mineral development is one of the few sectors that might offer the opportunity for a sustainable economy, to provide family wage jobs, and add significantly to the local tax base (e.g. Red Dog in the Northwest Arctic Borough, Usibelli Coal Mine in the Denali Borough, Fort Knox in the Fairbanks North Star Borough, and Greens Creek in the City & Borough of Juneau).

The following is a specific regional project, which is recommended to stimulate mineral development. If successful, such an integrated approach will have application throughout Alaska.

To stimulate investment by the private sector, the mineral potential, land status, infrastructure, and the constraints on development such as archeological sites or essential fish habitat, should be clearly identified in a GIS (Geographic Information System) database. In addition, communities in southeast Alaska which have been severely impacted by the decline in the timber industry have expressed interest in how they might be able to benefit from the minerals industry.

Based upon the economic deterioration in the region, excellent potential for mineral discovery, and a well-developed infrastructure, good candidates would be Prince of Wales Island, the Duncan Canal/Stikine mining districts, and the Haines region.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should appropriate \$250,000 for a two-year Capital Improvement Project. This project, administered by the Department of Community & Economic Development, would make relevant information available regarding mineral development opportunities in the economically depressed areas around the Porcupine district near Haines, the Duncan Canal and Bradfield regions in the Stikine mining district, and Prince of Wales Island, in a marketing format.

6). EDUCATION AND RESEARCH

6a) AMEREF

FINDING: The "Alaska Resource Kit" which is being used in the statewide public school system, is an excellent program for educating Alaska's students in the issues and fundamentals of resource development. The Kit incorporates technical, economic, and environmental aspects into a balanced program that addresses mineral, timber, and energy development. Future kits will be developed to address our fishing resources as well.

The Program is a cooperative and successful effort between the Department of Education, and the Alaska Minerals and Energy Resource Education Fund (AMEREF).

The Department of Education develops the curriculum and is responsible for its implementation into the school system through funding provided for teacher training.

AMEREF is presently supported by the resource industries. AMEREF funds the production and replacement of teaching materials, ensures the technical accuracy of the material, and organizes and distributes the education kits. AMEREF is looking to expand the program by incurring additional funding through various grant programs.

The program provides a broad-based resource education for Alaska's student's which is critical to their future ability to make well reasoned decisions about the use and protection of Alaska's wealth of natural resources.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should appropriate \$50,000 to the Division of Teaching and Learning Support, Minerals and Energy Education Program, as the State's share of supporting the Alaska Mineral and Energy Resource Education Fund.

6b) SCHOOL OF MINERAL ENGINEERING

FINDING: The University of Alaska Fairbanks' School of Mineral Engineering offers accredited degree programs for educating mining, geological, and petroleum engineers and conducts applied research through the Mineral Industry Research Laboratory and Petroleum Development Laboratory.

These professional degree and research programs are vital to the continued development of the State's mineral and energy industries, to the jobs and incomes of its residents, and to the public revenues used to support education and other public services.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should provide adequate budgetary support to the UAF School of Mineral Engineering.

7) EXTENDING THE LIFE OF THE MINERALS COMMISSION

FINDING. The charge of the Alaska Minerals Commission is to make recommendations to the Governor and Legislature on ways to mitigate the constraints on the development of the minerals industry in Alaska. The 1986 Act creating the Alaska Minerals Commission has been amended twice to extend its life through February 1, 2004.

Since 1986, several pieces of legislation have passed that have helped foster the recent growth of this important industry (see Executive Summary of this report).

Now more than ever, it is important to diversify the Alaskan economy. The Commission serves to focus the ideas of the many industry volunteers who contribute recommendations, and the annual budget of \$10,000 is a good investment for the State.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should extend the term of the Alaska Minerals Commission and provide funding through February 1, 2014.

PART B. FEDERAL ISSUES OF STATE CONCERN

B1) MARINE TRANSPORTATION TASK FORCE

FINDING: Requirements of the Jones Act continue to impede reasonable resource development opportunities in Alaska. Originally the Merchant Marine Act of 1920, the Jones Act requires that ships operating within the United States be built at U. S. shipyards, and that they be owned and crewed by Americans. Drafted shortly after World War I, this legislation grew out of the belief that a strong U.S. merchant marine was essential to maintaining the security of our country.

Several recent studies have concluded that the Jones Act impedes commerce in the U.S. and hampers the development of an efficient intermodal transportation system. However, overwhelming support by Congress and carrier industry as recently as 2000 to maintain the Act in its present form resulted in a collapse of any organized efforts to change the law.

The one sector that is clearly under-served due to the Jones Act is bulk carriage. Bulk shipping by ocean is a service practically nonexistent in the domestic market, and commodity shippers such as mineral companies in Alaska seeking new markets for their products are especially affected.

THE COMMISSION RECOMMENDS THAT:

The Governor and Alaska Legislature fund a marine transportation task force. The task force will identify and provide recommendations on key coastwise shipping questions related to transporting bulk resources like rock, sand, and gravel, coal, and other Alaska resources to regional and domestic markets. Associated infrastructure issues would include West Coast port facility support; markets (local, national and international); backhaul opportunities, a listing of available vessels in compliance, and potential solutions within the constraints of the Jones Act.

B2) DETAILED GEOLOGICAL MAPPING

FINDING: Although the U. S. Geological Survey (USGS) has produced many regional geological maps at the 1:250,000 scale, there have been very few bedrock and surficial geologic maps, and almost no engineering geologic maps, produced at the 1:63,360 (1 inch = 1 mile) scale for Alaska. Given that the regional maps are compiled from 1:63,360 maps, it would be very useful if the USGS published more detailed maps, and supplemented existing data with more field mapping programs including surficial and engineering geologic maps

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should encourage the Congressional delegation to seek funding for the U. S. Geological Survey specifically for detailed mapping, including surficial and engineering, as well as bedrock geological mapping of the State of Alaska. Such funding should include cooperative programs between the University of Alaska, the Alaska Division of Geological & Geophysical Surveys and the U. S. Geological Survey.

B3) RESOLUTION OF OUTDATED SEGREGATIONS

FINDING: Large tracts of land in Alaska that were "temporarily" withdrawn from public entry more than 30 years ago remain unnecessarily closed. These Outdated Segregations preclude mineral development, deny access to other lands and resources, and prohibit transfer of land selections to the State of Alaska and Alaska Native Claims Settlement Act (ANCSA) corporations.

The land segregations were originally set aside for three primary purposes:

1. Selection and conveyance to ANCSA corporations;
2. Possible inclusion within federal conservation units; and
3. Industrial developments such as alternate candidates for a Trans-Alaska Pipeline corridor.

Until recently, the Bureau of Land Management (BLM) was not motivated or funded to create the land management plans that are required before the land withdrawals can be removed by Congressional action.

In its January 2002 report, the Commission recommended that the Legislature urge the Congressional Delegation to expedite the process of removing the Outdated Segregations. House Joint Resolution No. 48 was drafted for this purpose, and it was passed on June 21, 2002. This resolution appears to have accomplished its intended purpose. The BLM has expressed its support for an accelerated program to address this issue. On November 18, 2002, the BLM Resources Advisory Council (RAC) unanimously passed Resolution 03-01. As a result the BLM RAC will form a working group that will prioritize pilot areas for fast-track resolution. The group will prepare findings and recommendations by May of 2003. The Alaska Minerals Commission applauds the Legislature for its action on this issue.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should direct the Department of Natural Resources to participate, monitor, encourage, and assist the BLM, to the extent necessary and possible, as the federal agency goes about the process of creating land management plans, removing outdated segregations, and completing conveyance of lands to the State and ANCSA corporations.

B4) ESSENTIAL FISH HABITAT

FINDING: Protection of "Essential Fish Habitat" (EFH) is a key component of the 1996 Sustainable Fisheries Act (SFA), which amended the 1976 Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA).

Under the SFA, eight Regional Fisheries Management Councils develop Fisheries Management Plans for important fish species, and provide this information to the National Marine Fisheries Service (NMFS). The NMFS has defined essential fish habitats very broadly, and throughout the western states has included all waters currently accessible to salmon. All federal agencies involved in any kind of development are required to consult NMFS if their actions "may adversely affect EFHs."

This broad mandate will, at best, slow permitting with a complex consultative process, or in the worst case result in project denial or modifications that effectively prohibit resource development. Thus "Essential Fish Habitat" has the potential to be at least as onerous as the Corps of Engineers 404 "Wetlands" permitting.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should work with the Congressional Delegation to limit the authority of the National Marine Fisheries Service to marine waters, and leave management of anadromous fish within state waters to the Alaska Department of Fish & Game.

B5) ANILCA PROVISIONS

FINDING: In order to assure passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, there were several sections included to protect pre-existing rights. Several provisions would allow mineral development on or near otherwise withdrawn land. Title XI addressed access across the Conservation System Units (CSU). Sections 101d and 1326b assured that no more land in Alaska would be considered for new CSU or similar designations. Sections 103b and 1302h provided mechanisms for the Secretary of the Interior to adjust the boundaries of CSU or to exchange lands within them to exclude mineralized areas.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature, through the Attorney General's office, the State's Washington D.C. office, and the Congressional Delegation should insist that the federal administration:

- B5a) Provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest Lands Conservation Act (ANILCA);
- B5b) Prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA; and
- B5c) Exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.

APPENDIX A ENABLING LEGISLATION

CHAPTER 98 SESSION LAWS OF ALASKA, 1986 AS AMENDED BY CHAPTER 12 SESSION LAWS OF ALASKA, 1998

AN ACT

Relating to the Alaska Minerals Commission; and providing for an effective date.

Section 1. (a) The legislature finds that the minerals industries, including metallic minerals, industrial minerals, and hydrocarbons, have traditionally and continue to be the major source of wealth and income in the state.

(b) The legislature further finds that there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restriction on surface access, complex and numerous permitting requirements, and limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans.

Section 2. ALASKA MINERALS COMMISSION ESTABLISHED. (a) The Alaska Minerals Commission is established in the Department of Commerce and Economic Development.

(b) The Commission is composed of 11 members. The Commission shall be composed of individuals who have at least five years' experience in the various aspects of the minerals industries in the state. The Governor shall appoint five members of the Commission, one of whom must reside in a rural community. The President of the Senate shall appoint three members of the Commission. The Speaker of the House of Representatives shall appoint three members of the Commission. Each member serves at the pleasure of the appointing authority.

(c) The Commission shall make recommendations to the Governor and to the Legislature on ways to mitigate the constraints, including governmental constraints, on development of minerals, including coal, in the State.

(d) The Commission shall report its recommendations each year to the Governor and the Legislature during the first 10 days of the regular session of the Legislature.

Sec. 3. This Act is repealed February 1, 1994.*

Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c)

*Note: The Act was amended to extend the life of the Commission to February 1, 2004.

APPENDIX B

ALASKA MINERALS COMMISSION STATEMENT OF PURPOSE

The Alaska Minerals Commission was created by the 14th Legislature in Chapter 38 of the Session Laws of 1986 and was established to make recommendations to the Governor and to the Legislature on ways to mitigate constraints on the development of minerals in the State.

The minerals industry offers the greatest potential of any Alaska industry for expanding and diversifying the State's economic base; for increasing Statewide employment; and for generating new wealth to create businesses and provide revenues for State and local governments.

However, Alaska has a complex pattern of land ownership and management; has overlapping and uncertain regulatory requirements; has unique geographic, geologic and climatic conditions; and has an undeveloped transportation system.

To attract the capital necessary for the exploration and development of new mines; to ensure that mines can be developed feasibly and in a timely fashion; and to ensure that producing mines remain viable—constraints on the industry must be mitigated.

The Alaska Minerals Commission will prepare reports for the First and Second Sessions of the 15th Legislature and the First Session of the 16th Legislature, recommending to the Governor and to the Legislature the adoption of legislation and the implementation of administrative policy that will best accomplish the statement of policy found in Article VIII, of the Constitution of Alaska:

"It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest."

And the statement of policy found in the President's National Materials and Minerals Report to Congress of April 5, 1982:

"It is the policy of this administration to decrease America's mineral vulnerability by taking positive action that will promote our national security, help ensure a healthy and vigorous economy, create American jobs, and protect America's national resources and environment."

The goals and recommendations of the Alaska Minerals Commission are to assure that the Legislature and the State administration endorse and promote development of a viable mining industry in the State.

APPENDIX C

MINERAL POLICY ACT

Sec. 44.99.110. Declaration of state mineral policy. The Legislature, acting under art. VIII, sec. 1 of the Constitution of the State of Alaska, in an effort to further the economic development of the state, to maintain a sound economy and stable employment, and to encourage responsible economic development within the state for the benefit of present and future generations through the proper conservation and development of the abundant mineral resources within the state, including metals, industrial minerals, and coal, declares as the mineral policy of the state that

- (1) mineral exploration and development be given fair and equitable consideration with other resource use in the multiple use management of state land;
- (2) mineral development be encouraged through reasonable and consistent non-duplicative regulations and administrative stipulations;
- (3) mineral development and the entry into the marketplace of mineral products be considered in developing a statewide transportation infrastructure system;
- (4) mineral development be encouraged through appropriate public information and education, scientific research, technical studies, and the University of Alaska program involvement;
- (5) economic development with respect to the state mineral industry be encouraged with Pacific Rim nations (Sec.1 Ch. 138 SLA 1988).

APPENDIX D

RECOMMENDATIONS IMPLEMENTED

During 2002 several of the recommendations from the January 2002 Alaska Minerals Commission report were effected, or substantial progress was made in their implementation.

- Funding was provided for the airborne geophysical surveys and for Alaska Mineral and Energy Education Fund (AMEREF).
- Several changes in the Water Quality Standards were proposed for implementation by the Department of Environmental Conservation.
- Funding was provided to study the effects of the State assuming primacy for the NPDES (National Pollutant Discharge Elimination System) process.
- Parts of the "Denali Block" were tentatively approved for State ownership.

Since the first report in 1987 there have been numerous implemented recommendations of the Alaska Minerals Commission, including:

- Passage of Alaska Mineral Policy Act (1988);
- Funding for the AMEREF program (1987-2002);
- Funding for the Citizen's Advisory Commission on Federal Areas (1991-1998);
- Addition of the Department of Commerce to the Resource Cabinet (1992);
- Exemption of minerals from municipal in-situ taxation (1992);
- Funding for airborne geophysical surveys (1992-2002);
- Creation of a task force for RS2477 trail inventory (1993);
- Restriction of Mineral Closing Orders (1993);
- Protection for claimants on state-selected land (1994);
- Extending terms of permits when legal impediments prevent use (1994);
- Selection of lands with high mineral potential (1994);
- Passage of the Exploration Incentives Act (1995);
- Passage of the Diminutive Discharge Bill (1995);
- Providing more flexible work hours for miners (1996);
- Allowing coal mines access to the state bonding pool (1996);
- Assertion of RS2477 rights-of-way (1997);
- Legislative Resolution 31 was passed opposing International Parks, World Heritage Sites, and Marine Biosphere Reserves in western Alaska, and supporting the federal American Lands Sovereignty Protection Act (1997);
- Resolution of the Mental Health Lands issue (1997);
- Funding was provided to update equipment in the Recorders Offices (1998);
- Establishment of a rational State water quality standard for arsenic (1998);
- The Alaska Minerals Commission was authorized to continue until February 2004 (1998);
- Baseline water quality studies by the U. S. Geological Survey and the Division of Mining, Land and Water continued in the Fortymile and Goodpaster watersheds (1998-2001);

- The Department of Environmental Conservation (DEC) received funds for a core permitting team (2001);
- Some State-selected lands in the Denali Highway area were tentatively approved for State ownership (2002);
- The DEC proposed necessary changes to the State's Water Quality Standards (2002);
- Funds were appropriated to study the desirability of the State assuming primacy for the NPDES (National Pollutant Discharge Elimination Discharge System) process (2002).
- Funding was provided for the airborne geophysical surveys and for Alaska Mineral and Energy Education Fund (AMEREF), and
- Several changes in the Water Quality Standards were proposed for implementation by the Department of Environmental Conservation (2002).

Obviously the Commission cannot take sole credit for the resolution of many of these issues, but it is encouraging to note the success of Commission recommendations, thanks to the efforts of the Legislators and Governors in recent years.



This publication was released by the Department of Community and Economic Development. Its purpose is to report the findings and recommendations of the Alaska Minerals Commission to the Governor and to the Legislature of Alaska. It was produced at a cost of \$1.40 per copy and printed in Juneau, Alaska. This publication is required by Chapter 98, Session Laws of Alaska, as amended by Chapter 4, Session Laws of Alaska, 1993.

Photo Credit: NovaGold

SB

79

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/6/03

REPORTED OUT MAR 13 2003 SENATE FINANCE COMMITTEE
--

FURTHER:

DATE TURNED IN TO OFFICE: 3/13/03

Finance Committee considered

SENATE BILL NO. 79

SB 79 EXTEND ALASKA MINERALS COMMISSION

"An Act extending the termination date of the Alaska Minerals Commission."

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DCED	2/27	9.5		1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Adrian Taylor</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

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FISCAL NOTE

REPORTED OUT

MAR 13 2003

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 79
(S) Publish Date: 3/6/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Extend Alaska Minerals Commission BRU Community Assist & Econ. Dev. 1405
Sponsor Senator Stevens Component Community & Business
Requester Senate Resources Development: _____
Component No. 2486

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel	8.0	8.0	8.0	8.0	8.0	8.0
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	9.5	9.5	9.5	9.5	9.5	9.5

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	9.5	9.5	9.5	9.5	9.5	9.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	9.5	9.5	9.5	9.5	9.5	9.5

Estimate of any current year (FY2003) cost: 9.5
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would extend the existing Alaska Minerals Commission for an additional 10 years. Costs are expected to continue at current levels, \$9,500 per year. These costs consist of travel by Commission members to attend Commission meetings (\$8,000) and publication of the statutorily required annual Minerals Commission Report (\$1,500).

Prepared by: Gene Kane, Acting Director Phone 907-269-4580
Division: Community & Business Development Date/Time 2/27/03 3:12 PM
Approved by: Edgar Blatchford, Commissioner Date 2/27/2003
Agency: Department of Community & Economic Development

COMMITTEE COPY

Senator Ben Stevens

Senate Majority Leader



Sponsor Statement

Senate Bill 79, "An Act extending the termination date of the Alaska Minerals Commission."

The Alaska Minerals Commission is set to expire on February 1, 2004. SB 79 seeks to extend the Commission until the year 2014.

The Alaska Minerals Commission was first created in 1986 and charged with making recommendations to the Governor and Legislature on ways to mitigate constraints on the development of minerals in Alaska. The commission consists of 11 members. Each member must have at least five years experience in the minerals industry. Five members are appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House. At least one member must reside in a rural community.

The Commission must report its recommendation to the Governor during the first ten days of the regular session.

The Alaska Minerals Commission has had numerous recommendations implemented since 1987. Recommendations that were implemented include:

- Passage of Alaska Minerals Policy Act (1988)
- Funding for airborne geophysical surveys (1992-2002)
- Creation of a task force for RS2477 trail inventory (1993)
- Assertion of RS2477 rights-of-way (1997)
- Legislative Resolution 31 was passed opposing International Parks, World Heritage Sites, and Marine Biosphere Reserves in Western Alaska, and supporting the federal American Lands Sovereignty Protection Act (1997)
- Extending terms of permits when legal impediments prevent use (1994)

Senator Ben Stevens
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Frank H. Murkowski, Governor

Alaska

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28 February 2003

The Honorable Ben Stevens
Alaska State Senate
State Capitol, Room 119
Juneau, AK 99801-1182

FEB 28 2003

Dear Senator Stevens:

In 1986, the Legislature established the Alaska Minerals Commission (AMC). The Commission recommends to the Governor and Legislature ways to mitigate constraints, including governmental constraints, on the development of minerals.

The Governor, President of the Senate, and Speaker of the House appoint AMC members. Current membership is representative of placer, hard rock and coal mining industries from diverse areas of the state. Each year since 1987, the Commission has held public meetings in Fairbanks and Anchorage to develop recommendations put forth in an annual report.

Recommendations from the Commission have ranged from those that come from family-owned placer mines, to recommendations impacting international mining operations. A sampling of successful Commission recommendations include:

- Changes in the Water Quality Standards
- Funding of Airborne Geophysical Surveys
- Accelerated Transfer of State Selected Lands
- Exemption of Minerals from In-Place Taxation
- Changes to the Alaska Mineral Policy Act (more flexible work hours for underground miners)
- Changes to the Exploration Incentives Act

Significant constraints remain to be addressed in order for Alaska's mining industry to reach its growth potential. The AMC has demonstrated itself to be an effective body in making positive changes to support on-going mineral development in Alaska. Such actions are consistent with the Murkowski Administration's promise to work toward opening up new areas to mining through providing access to major mining projects, reducing permitting time, lowering development costs, and encouraging value-added processing of minerals.

Thank you for sponsoring legislation to reauthorize the Alaska Minerals Commission. We look forward to continuing our partnership with the Alaska Minerals Commission.

Sincerely,

Edgar Blatchford

Edgar Blatchford,
Commissioner

Department of Community & Economic Development

"Promoting a healthy economy and strong communities"

REPORT OF THE 2003

Alaska Minerals Commission



The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to The Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

ALASKA MINERALS COMMISSION

JANUARY 2003

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FOREWORD

The Alaska Minerals Commission again wishes to thank the Governor and the Legislature for implementing some of our recommendations during 2002. Highlights include substantial positive proposed changes in the Water Quality Standards, funding to study assumption of water quality primacy, continued funding of geophysical surveys and AMEREF, and accelerated transfer of State-selected lands. Partly as a result of the responsive actions of the Governor and the Legislature over the last few years, mining development opportunities are improving in Alaska as demonstrated by the recent growth in the industry.

However, there are still significant obstacles to overcome for Alaska to reach its growth potential and to gain a reputation as a predictable and favorable place to do business.

The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

The Commission has presented reports to the Governor and Legislature annually since January 1987, and is authorized to do so until January 2004. Commission members are appointed by the Governor, the President of the Senate, and the Speaker of the House. The current members are representatives of placer, hard rock, and coal mining industries and come from diverse areas of the state.

During 2002, the Commission held meetings in Fairbanks and Anchorage. The recommendations in this report are the result of input at these meetings. All Commission meetings are open to the public, and members encourage comments from all interested parties at any time.

Following the list of recommendations in the executive summary, this report contains background information, or "findings", on each issue, followed by the related recommendation. These have been separated into Part A, which deals with issues mainly of State concern, and Part B that includes federal issues affecting the State that can be influenced by State participation.

On behalf of the members of the Commission, I would like to express our appreciation to those members of the public, the Alaska Miners Association, the Resource Development Council, and the many government agencies and private organizations that contributed to the preparation of the report. The Commission wishes to thank Commissioner Deborah B. Sedwick of the Department of Community and Economic Development and Dick Swainbank and Frankie Fillifant of the Division of Community & Business Development who have provided excellent administrative and professional support to the Commission.

Irene Anderson, Chair

**ALASKA MINERALS COMMISSION
2003 REPORT TO THE GOVERNOR
AND ALASKA STATE LEGISLATURE**

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(www.dced.state.ak.us/cbd/minerals/mining.htm)

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EXECUTIVE SUMMARY

CURRENT RECOMMENDATIONS

The commission encourages the Governor and Legislature to act on the following recommendations in 2003:

- Eliminate frivolous litigation by limiting "public interest litigant" status;
- Increase the efficiency of mine project permitting;
- Update water quality standards;
- Assist in infrastructure development that benefits mining and other industries;
- Resolve land tenure, navigability and right of way access issues;
- Acquire baseline geological and environmental knowledge statewide;
- Promote industry education through support of relevant university programs and the Alaska Minerals & Energy Resource Education Fund.

INDUSTRY OVERVIEW

The mineral industry is one of three base industries of Alaska to show real growth since 1991. The industry currently has a gross value of approximately \$1 billion dollars, a milestone first reached in 1996. By virtue of several cornerstone operations, the industry has maintained this respectable level despite challenging economic conditions and depressed commodity prices. In the past year, exciting new discoveries have been made, the price of gold and platinum-group elements has risen, and a general feeling of optimism is starting to develop. Unfortunately over the same period the price of copper and zinc has fallen, and taken a toll on the base metal mines in Alaska.

However, while mining has shown growth over the past decade, the industry has been static in recent years. Exploration for new mines has diminished. Smaller hard-rock operations are absent, and placer mining is stagnant. Other countries, states, and provinces continue to surpass Alaska in the global competition for exploration dollars.

Red Dog, Fort Knox, Greens Creek, Usibelli Coal, Illinois Creek, and Anchorage Sand & Gravel are outstanding operations that contribute significantly at the local level. These mines are providing rewarding, long-term, high-paying careers in urban and remote areas alike. These operations have a profound, positive impact on their respective local communities, and serve as shining examples of what could be achieved in other regions of the state.

As the premier producing mine in the state, Red Dog continued to improve its efficiency in 2002 through its Mill Optimization Project, which translated to increased production through superior recovery and product grade. The increased production has been helpful in offsetting some of the financial impact related to decreased zinc prices, however the impact remained significant with a loss of \$10 million in the third quarter of 2002.

Three development projects, Pogo, Donlin Creek, and Kensington are poised to become viable mining operations in the near future.

Activity at the Pogo gold deposit near Delta Junction included surface geotechnical drilling and definition drilling of the lower ore zone. The major focus of this project in 2002 was the permitting process and the development of an Environmental Impact Statement.

Exploration at Donlin Creek has resulted in a dramatic expansion of the size and grade of the gold resource. The project is on the verge of becoming a major mine. This development has the potential to change the face of southwest Alaska, bringing prosperity and promise to a depressed region desperate for alternatives. Transportation infrastructure and energy development are key.

A revised mining plan has been submitted at the Kensington project in southeast Alaska, which may allow the project to proceed to development.

Grass roots exploration programs were limited, and largely reduced in scope from previous years. One bright spot was the area northwest of Iliamna, where several significant copper-gold prospects were discovered. Drill programs for gold and silver were reported near Tok, Northway, Rock Creek north of Nome, and in the Wulik Valley on the north flank of the Brooks Range. In southeast Alaska exploration continued for platinum-group elements at Union Bay and Duke Island, and for polymetallic targets on Woewodski Island. On the south flank of the Alaska Range, exploration for platinum-group elements was curtailed due to continuing uncertain land status. The state must do what it can to finalize land conveyance, so that land tenure in the state is clear to developers.

The State Division of Geological & Geophysical Surveys continued to do outstanding work on a minimal budget. Airborne geophysical surveys were flown at Council near Nome, and the Bureau of Land Management contracted for surveys within the Denali Block and at Sleetmute. Geologic mapping continued in 2002 in the Salcha and Goodpaster River areas that had airborne surveys flown in past years. Alaska continues to lag far behind the remainder of the continent in geological knowledge of its land base. Indeed, many third world countries supercede Alaska in this regard. The importance of baseline data acquisition for the state cannot be overstated.

The mining industry in Alaska has maintained the status quo over past years in the face of challenging conditions. Several development projects, if brought to fruition, will provide outstanding benefits in remote regions, and formulate the critical mass the industry requires to sustain itself over the long term. Given the proper support, the industry has the ability to make a tremendous difference in Alaska.

FINDINGS AND RECOMMENDATIONS

PART A: ISSUES REQUIRING STATE ACTION

1) REGULATORY REFORM

1a) LITIGATION REFORM

FINDING: A critical component to resource development in the State of Alaska is insuring that development projects, once permitted by the appropriate State Agencies, can proceed without delay. Unfortunately, groups opposed to development routinely file litigation with the sole objective of either preventing or delaying permitted development. Often, the basis for the litigation is without merit. Under Alaska's current law, such groups, regardless of financial resources or membership composition, can routinely qualify as "public interest litigants", in which case there is absolutely no financial downside to them if they lose the litigation. The net result is that there is no disincentive to these groups not to pursue litigation. As a consequence, the State of Alaska as well as industry and developers are forced to defend themselves in lengthy and costly litigation with little chance of recovering any costs or attorney fees even when they prevail in the litigation.

The groups that regularly oppose resource development are not simply concerned citizen groups but more often special interest groups supported financially by national and/or international organizations whose stated mission is resource preservation. The result of these systematic and orchestrated lawsuits filed by purported "public interest litigants" is inhibiting development by escalating development costs, both in terms of real dollars spent on litigation and lost dollars due to delays. Modifying Alaska's existing rules and regulations for proposals where public input and administrative appeal was afforded by eliminating "public interest litigant" status in Administrative appeal decisions and awarding fees and costs to the prevailing party in litigation ensures a level playing field. Likewise, requiring disclosure of funding sources by those who seek to qualify as litigants and/or who seek to file an Administrative Appeal allows those defending the litigation to know the identity of those who are actually supporting the litigation and the amount of that financial support.

Modification of Alaska's existing "public interest litigant" rules and regulations is not aimed at preventing litigants from pursuing administrative appeals, rather the intent is one of fundamental fairness — ensuring that the identity of those who initiate the litigation are known and that the potential negative consequences of such litigation are borne equally by all parties to the litigation. The objective is not to inhibit meritorious litigation, but rather to inhibit frivolous litigation by ensuring that there is a consequence to those who file and support such litigation.

If responsible resource development is to be promoted and achieved, it is imperative that once development projects are permitted they are not delayed, by individuals, or entities that choose to pursue frivolous litigation. Modifying Alaska's existing rules and regulations regarding "public interest litigants" is critical to promoting and achieving responsible resource development in the State of Alaska.

THE COMMISSION RECOMMENDS THAT:

- 1a.1) Public Interest Litigant Status needs to be limited. The Legislature should modify existing State Statutes to specifically provide for any party bringing a civil action seeking judicial review of Administrative Agency decisions, in which they were afforded an opportunity for public input and administrative appeal, not be awarded "public interest litigant" status. Furthermore, the prevailing party in such civil action shall be entitled to an award of attorney fees and costs as in other civil actions.
- 1a.2) Funding Sources need to be disclosed. The Legislature should modify existing State Statutes to require that a condition of obtaining litigant status and/or of filing an Administrative Appeal, under regulations, is the initial and supplemental disclosure of the identity of those who provide funding to the entity who seeks litigant status and/or initiates an Administrative appeal and the amount of such funds during the past two years and during the term of the Administrative Appeal.

1b) PERMIT EFFICIENCY

FINDING: A key element in marketing Alaska as an attractive and competitive place to do business is the ability to process permit applications in a responsible, consistent and expeditious manner.

In the 2001 legislative session, funding was provided for the Alaska Department of Environmental Conservation (ADEC) to reconstitute the qualified core of water quality permitting staff. Equally important to adequate funding, the agencies need the flexible management tools necessary to provide responsive, effective, and efficient management of permitting issues.

Permitting delays negatively impact business in Alaska. Delays are often due to staffing shortages which creates backlogs for industry project permit review.

To help resolve this problem, ADEC has recently utilized the Department of Natural Resources (DNR) authority for third party contracting through the Large Mine Permit process, and has contracted directly with third party contractors to assist with permit review. ADEC is also planning to select one or more individuals/firms that would be available on-call to provide technical assistance to a permitting team regarding risk assessments and monitoring requirements for National Pollutant Discharge Elimination System (NPDES) discharges, and mixing zones for placer miners.

Supplementing permanent staff during permit development is a positive step that will allow agencies to respond more readily to the intermittent demands associated with industry growth. Further, it will support the limited number of permanent staff personnel via access to the varied technical and scientific expertise required for responsible permitting.

In some circumstances, permitting delay has been characterized by industry as "procedural duress." Industry recognizes that permitting review is an iterative process through discussion and supplementing of relative information, public review, comment and response to comment. However, an unreasonable extension of any of these elements can lead to costly and unnecessary delay. At present there are instances where State requests for additional information, and subsequent time extensions, appear to be based on a partial or cursory review. This results in additional time delay through multiple information requests. Further concern is often

raised regarding extension of public review and comment periods. This practice is detrimental to the agency, to the industry, and ultimately to economic development within Alaska, potentially leading to the loss of millions of dollars in revenue, and related monetary losses in taxes and royalties.

Permitting agencies need to ensure that the permitting process is not unnecessarily extended. Initial permit review should result in a single and complete list of information deficiencies. Additional requests for information should be limited to questions arising out of new information.

The Alaskan industries, agencies, Administration, and Legislature can work together to provide responsible and reliable permitting that ensures the protection of the environment and a sound future. For this to happen, we cannot be complacent in trying to improve permitting efficiency through funding alone. All of the recommendations provided must occur in concert for Alaska to fulfill its potential for sustainable and attractive resource development.

THE COMMISSION RECOMMENDS THAT:

- 1b.1) The Administration must continue to aggressively search for and find means to accommodate the use of third-party contractors who will work under the core managers to provide permit development support on an as-needed basis and extend these efforts to all types of environmental and resource permitting. The Legislature needs to encourage and support the Administration in this effort.
- 1b.2) The Legislature should require a periodic permitting status report accounting for agency staff and management.
- 1b.3) Salary scales for public workers must be improved relative to the private sector in order to retain competent staff.

1c) WATER QUALITY STANDARDS

FINDING: When municipal water treatment plants or industrial projects require water discharge permits, the Department of Environmental Conservation must insure that the proposed discharge will meet the State of Alaska water quality standards for various parameters. Due to the rapidly advancing science on both the potential environmental effects of these parameters and the changing technology for detecting the very low concentrations, the most appropriate numerical criteria for these parameters keeps advancing.

In 1999, the U.S. Environmental Protection Agency (EPA) approved a new list of water quality criteria that updated many of the numerical criteria. The EPA also responded to the environmental science that had developed over the years and replaced the old total recoverable values with new dissolved criteria.

In recognition of this advancing science, the Department of Environmental Conservation proposed revisions to the Alaska water quality standards on August 2, 2002. The public comment period on these proposed changes was completed in October, 2002. These revisions need to be adopted by the State immediately, and forwarded to the EPA for review and approval.

THE COMMISSION RECOMMENDS THAT:

The Governor should instruct the Department of Environmental Conservation to adopt the revisions to the Alaska water quality standards as proposed on August 2, 2002.

1d) MIXING ZONES

FINDING: State water quality regulations that became effective in November 1997 contain a prohibition against mixing zones in anadromous or resident fish spawning areas. This language makes it more difficult to consider site specific conditions, such as the productivity of the spawning area compared to the potential benefit of a municipal waste treatment plant or industrial project that might require a mixing zone. Without flexibility in the regulation, many projects that could significantly improve the health and welfare of people throughout Alaska may be precluded due to the widespread presence of spawning fish, including resident fish. Prior to promulgation of the latest mixing zone regulations, the Alaska Department of Environmental Conservation (ADEC) considered language that could have allowed mixing zones, if either the discharge had no adverse effect on spawning or if all reasonably anticipated adverse impacts were mitigated to the satisfaction of the Department of Fish and Game (ADF&G). This type of discretionary flexibility needs to be incorporated in the regulations so future projects that may be beneficial are not automatically prohibited.

THE COMMISSION RECOMMENDS THAT:

The Governor should direct the Alaska Department of Environmental Conservation and the Alaska Department of Fish & Game (ADF&G) to work with user groups to develop mixing zone regulations that will, at the department's discretion, authorize mixing zones in spawning areas if:

- (a) The discharge is not reasonably anticipated to adversely affect the capacity of the area to support present or future spawning activities; or
- (b) The discharge is reasonably anticipated to adversely affect the capacity of the area to support present and future spawning activities and the ADF&G has approved a plan to mitigate all reasonably anticipated adverse impacts.

1e) ALASKA'S CLEAN WATER ACTIONS

FINDING: In 2001 the Alaska Division of Governmental Coordination (ADGC) began an initiative called the Alaska's Clean Water Actions (ACWA). Members of the Commission expressed concern that ACWA was a new state regulatory program without basis in Alaska law. Further, members were concerned that this 'new program' overlapped other agency programs as well as creating new obligations. Industries or other users of water could be seriously and adversely affected if their business-based use of waters, such as placer mining, became restricted via the ADGC listing of water bodies as "polluted" or "at risk".

Through meetings with ADGC, other resource agencies, miners, and recently with the Minerals Commission, it was clarified that the ACWA initiative is a collaboration among the resource agencies. The collaboration is important to prioritize its water based management functions, to better align the priority work of the state agencies, and to use a ranking mechanism to prioritize