

SCOMM

# 9:163

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

Original sponsor: The Special Committee  
on the Alaska Permanent  
Fund

BY THE SPECIAL COMMITTEE ON  
THE ALASKA PERMANENT FUND

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 682

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the renewable resources funds."

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

8 \* Section 1. AS 37 is amended by adding a new chapter to read:

9 CHAPTER 12. ALASKA RENEWABLE RESOURCES CORPORATION.

10 Sec. 37.12.010. DECLARATION OF POLICY. It is the policy of the  
11 state to

12 (1) rehabilitate, enhance, and develop its renewable re-  
13 sources and, insofar as is consistent with sound resource management  
14 policies, develop its human resources by providing maximum opportunities  
15 for employment and a higher standard of living for its citizens; and

16 (2) utilize the funds set aside under ch. 11 of this title to  
17 further the (A) development of renewable resources that will contribute  
18 to a stable self-sustaining state economy, employment opportunities, and  
19 lifestyle alternatives for its citizens, and (B) commercial, tradi-  
20 tional, and common uses of the state's renewable resources.

21 Sec. 37.12.020. FINDINGS. (a) The legislature finds that Alaska  
22 has renewable resources that are not being utilized to their full pote  
23 tial. Many problems which confront the state, including high unem-  
24 ployment and unstable economy, could be mitigated by the expanded us  
25 and development of its renewable resources.

26 (b) It is further found that Alaska's economy has historical  
27 depended upon sporadic and non-stable development.

28 (c) It is further found that several key factors have con'  
29 to the slow development of renewable resource industries, incl'

1 (1) insufficiency of research and development financing and  
2 venture capital financing;

3 (2) a lack of knowledge within the business and financial  
4 communities about conditions affecting renewable resource industrial  
5 development in the state and a lack of scientific information concerning  
6 many resources; and

7 (3) a lack of technology appropriate to Alaska.

8 (d) It is further found that the state's policy of assisting the  
9 development of viable industries is best accomplished by providing  
10 assistance to the private sector to identify and demonstrate new pro-  
11 ducts, markets, and technologies.

12 Sec. 37.12.030. ALASKA RENEWABLE RESOURCES CORPORATION CREATED.  
13 There is created the Alaska Renewable Resources Corporation to carry out  
14 the purposes of this chapter. The corporation is a public corporation  
15 of the state and an instrumentality of the state within the Department  
16 of Revenue, but has a legal existence independent of and separate from  
17 the state. The exercise by the corporation of the powers conferred by  
18 this chapter is considered an essential function of the state.

19 Sec. 37.12.040. PURPOSES. The purposes of the corporation are to

20 (1) facilitate the rehabilitation, enhancement, and develop-  
21 ment of the state's renewable resources so as to strengthen the self-  
22 sustaining sectors of the state economy;

23 (2) sponsor research and development of technologies and  
24 innovations for the rehabilitation and enhancement of the state's renew-  
25 able resources to achieve an appropriate use of the resources;

26 (3) identify new products, markets, and technologies for  
27 renewable resource industries in the state which will constitute an  
28 appropriate use of the resources; stimulate the research and development  
29 of these products, markets, and technologies; assist in the demonstra-

1 tion of their technical and economic feasibility; and assist in their  
2 introduction into commercial markets.

3 Sec. 37.12.050. ALLOCATION. (a) There shall be allocated to the  
4 corporation from the receipts described in AS 37.11.020 five per cent of  
5 the total receipts paid the state from mineral lease bonuses and rentals  
6 for state land and royalties derived from minerals produced on state  
7 land. Payments of the amount allocated by this section shall be made to  
8 the corporation by the Department of Revenue on a monthly basis.

9 (b) Fifty per cent of all actual receipts of the corporation, from  
10 whatever source except receipts from the corporation's investments,  
11 shall be deposited into the renewable resources investment fund (AS  
12 37.11.050).

13 Sec. 37.12.060. BOARD OF TRUSTEES. A board of trustees of the  
14 corporation is established as its governing body.

15 Sec. 37.12.070. COMPOSITION OF THE BOARD OF TRUSTEES. The board  
16 of trustees consists of three members appointed by the governor and  
17 confirmed by a majority of the members of the legislature in joint ses-  
18 sion. The board shall annually elect a chairman from among its members.  
19 A chairman may not succeed himself.

20 Sec. 37.12.080. TERM OF OFFICE. The members of the board of  
21 trustees shall be appointed for terms of four years, and they may be  
22 reappointed. Terms shall be staggered. The initial terms shall be one  
23 member serving for two years, one member serving for three years, and  
24 one member serving for four years.

25 Sec. 37.12.090. REMOVAL AND VACANCIES. (a) The governor may  
26 remove a board member from office by and with the consent of a majority  
27 of the members of the legislature in joint session. A removal by the  
28 governor shall be in writing and state the reason for removal. If the  
29 legislature is not in session, the governor may suspend a member of the

1           Sec. 37.12.120. COMPENSATION OF BOARD MEMBERS. Board members are  
2 in the exempt service under AS 39.25 and receive an annual salary within  
3 Range 30 of the salary schedule for state employees established by  
4 AS 39.27.011.

5           Sec. 37.12.130. EMPLOYMENT OF PERSONNEL. The board may employ and  
6 determine the salary of an executive director. The executive director  
7 may, with the approval of the board, select and employ additional staff  
8 as necessary. The executive director and all employees of the board are  
9 in the exempt service under AS 39.25.

10          Sec. 37.12.140. CONFLICTS OF INTEREST. (a) Members of the board  
11 of trustees are subject to the provisions of AS 39.50.

12          (b) No member or employee of the board may acquire an interest,  
13 direct or indirect, in a corporation, company, association, or project  
14 owned, controlled, or invested in by the corporation. If a member or  
15 employee owns or controls such an interest, he shall immediately dis-  
16 close the interest in writing to the board and refrain from participat-  
17 ing in any manner in any activity relating to that interest.

18          Sec. 37.12.150. POWERS. In carrying out the corporate powers of  
19 the corporation, the board may

- 20           (1) adopt, alter, and use a corporate seal;  
21           (2) prescribe, adopt, amend, and repeal bylaws;  
22           (3) sue and be sued in the name of the corporation;  
23           (4) enter into any agreements necessary to the exercise of  
24 its powers and functions;  
25           (5) accept grants from and contract with the federal govern-  
26 ment and the state or its political subdivisions and to that end comply  
27 with the provisions of federal, state, or local programs where neces-  
28 sary, except that it may not enter into any agreements whereby any  
29 permanent state or local government position is funded or partially

1 board. Upon suspension, a board member may not participate in board  
2 business and may not be counted for the purpose of establishing a quo-  
3 rum. A suspended member shall continue to receive his salary as a board  
4 member until the legislature in joint session consents to his removal.  
5 The joint session shall be held within 30 days from the date of removal  
6 if the removal occurs while the legislature is in session or within 30  
7 days of convening of the legislature if the legislature is not in ses-  
8 sion. If the legislature refuses to consent to his removal, the board  
9 member shall be reinstated to his position.

10 (b) A vacancy on the board shall be promptly filled by appointment  
11 by the governor and confirmation by a majority of members of the legis-  
12 lature in joint session. An appointee to fill a vacancy shall hold  
13 office for the balance of the term for which his predecessor on the  
14 board was appointed. If a vacancy arises on the board while the legis-  
15 lature is not in session, the governor may appoint an interim board  
16 member until such time as the legislature in joint session fails to  
17 confirm the interim member's appointment.

18 (c) A vacancy on the board does not impair the authority of a  
19 quorum of the board to exercise all the powers and perform all the  
20 duties of the board.

21 Sec. 37.12.100. QUALIFICATIONS OF BOARD MEMBERS. (a) No person  
22 may be appointed to the board who has not been a resident of the state  
23 for at least three years.

24 (b) No member of the board may hold any other state or federal  
25 office, position, or employment, whether elective or appointive, except  
26 as a member of the armed forces of the United States or the state.

27 Sec. 37.12.110. QUORUM. Two members of the board constitute a  
28 quorum for the transaction of business and the exercise of the powers  
29 and duties of the board.

1 funded in connection with a project;

2 (6) accept grants and loans from other sources than those in  
3 (5) of this section to be held and used for the purposes of the corpora-  
4 tion;

5 (7) appear in behalf of the corporation before boards, com-  
6 missions, departments, or other agencies of municipal, state, or federal  
7 government;

8 (8) acquire, hold, use, lease, sell, or otherwise dispose of  
9 property of any kind, real, personal, or mixed, or any interest in it;

10 (9) hold, as a means of securing the providing of financial  
11 assistance, patents, copyrights, trademarks, royalties, or any other  
12 evidences of protection or exclusivity issued under the laws of the  
13 United States or any state or nation;

14 (10) prepare, publish, and distribute technical studies,  
15 reports, bulletins and other materials it considers appropriate;

16 (11) invest, in such form as it considers appropriate, in  
17 projects which are economically viable and income-producing;

18 (12) provide grants for projects having broad public applica-  
19 tion which do not have direct income-producing potential;

20 (13) adopt regulations governing the exercise of its corporate  
21 powers;

22 (14) deposit funds, or invest surplus funds through the  
23 Alaska Permanent Fund Corporation (AS 37.13) in such obligations as the  
24 Board of Trustees of the Alaska Renewable Resources Corporation may  
25 determine;

26 (15) do all acts and things necessary or desirable to carry  
27 out the purposes of the corporation.

28 Sec. 37.12.160. DUTIES. In carrying out the purposes of this  
29 chapter, the board shall

1 (1) seek to maintain the productivity of healthy renewable  
2 resources and expand the productivity of depleted or underutilized  
3 renewable resources;

4 (2) provide financial assistance for projects which the board  
5 finds will accomplish the purposes of the corporation as set out in sec.  
6 40 of this chapter;

7 (3) promote the utilization of the state's renewable re-  
8 sources in the state and the development of import substitution and  
9 export markets;

10 (4) annually prepare long-range operating and financial plans  
11 and the budget for the forthcoming year;

12 (5) monitor approved projects for compliance with this chap-  
13 ter and provide operational and performance evaluations (post-audits) of  
14 projects receiving financial assistance and an overall assessment,  
15 expressed in qualitative and quantitative terms, of the degree to which  
16 the purposes of the corporation, as set out in sec. 40 of this chapter,  
17 have been achieved; and

18 (6) attempt to fund activities which will tend to maximize  
19 returns to the state and local governments and its citizens in such  
20 forms as tax revenues and resident employment and income.

21 Sec. 37.12.170. FINANCIAL ASSISTANCE. (a) In providing financial  
22 assistance, the board shall

23 (1) consider the proposals of qualified applicants only after  
24 the applicant has submitted a detailed proposal in the form prescribed  
25 by the board; no assistance may be approved by the board unless it  
26 finds, in writing, that

27 (A) the proposed project, if successful, will further  
28 the purposes of the corporation as set out in sec. 40 of this  
29 chapter;

1 (B) the application contains an adequate plan for pro-  
2 ject implementation, including, when applicable, a complete busi-  
3 ness, financial and marketing plan for commercial activities;

4 (C) sufficient capital is not available from other  
5 sources on reasonable terms;

6 (D) the applicant has agreed that if new renewable  
7 resource industrial activity results from the proposed project, his  
8 best efforts will be employed to keep that activity in the state  
9 for a minimum period of time specified by the board;

10 (E) the applicant demonstrates sufficient technical and  
11 business expertise to accomplish the objectives of the proposed  
12 project;

13 (F) all costs, including additional governmental cost,  
14 associated with and ancillary to the project and future obligations  
15 generated by the project have been identified, including any neces-  
16 sary operating, maintenance, or other support costs for the life of  
17 the project;

18 (G) potential resource use conflicts that may result  
19 from the proposed project are identified and evaluated, and when  
20 necessary, plans to mitigate or resolve those conflicts and to  
21 preserve for the future options for the use of the state's renew-  
22 able resources are included in the application;

23 (2) use the financial mechanism most appropriate to the  
24 conditions of the applicant and the proposed project and which will most  
25 effectively utilize the funds available; grants may be made by the board  
26 of up to 90 per cent of the total project costs for the following pur-  
27 poses:

28 (A) projects for the applied research and development of  
29 products, technologies, or innovations for the rehabilitation,

1 enhancement, or development of the state's renewable resources;

2 (B) projects for the demonstration, on a one-time basis,  
3 of the economic or technical feasibility of a new product, market,  
4 or technology involving a renewable resource; or

5 (C) projects for the rehabilitation, enhancement, or  
6 development of a common-property resource where the benefits from  
7 the project cannot be captured by any single economic unit.

8 (3) in evaluating projects, consider the preferences and  
9 priorities of the residents of the region in which the project is to be  
10 located;

11 (4) require investments made by the corporation to be secured  
12 by means determined to be appropriate by the board.

13 (b) The board may not

14 (1) invest or otherwise provide assistance of more than five  
15 per cent of the resources of the corporation or \$1,500,000, whichever is  
16 less, in a single project or applicant unless the legislature has ap-  
17 proved the investment by concurrent resolution;

18 (2) invest in more than 49 per cent of the outstanding cor-  
19 porate stock or other corporate obligations issued by an applicant  
20 unless the legislature has approved the investment by concurrent resolu-  
21 tion;

22 (3) make a loan for a period in excess of 30 years unless the  
23 legislature has approved the loan by concurrent resolution;

24 (4) assume the responsibility for management of any project  
25 in which it has invested and may not exercise voting rights for that  
26 purpose or for any other purpose which is within the scope of managerial  
27 control; or

28 (5) provide funds to any state agency unless that expenditure  
29 is included in the corporation's annual budget;

1 (6) allocate to grants more than 10 per cent of the annual  
2 appropriation of the corporation.

3 (c) Nothing in this section prevents the board from taking such  
4 action and exercising such rights as it considers necessary for the  
5 protection of its financial interests in the event of

6 (1) actual or threatened default on any of the board's invest-  
7 ments;

8 (2) actual or threatened insolvency of a project in which the  
9 board has made an investment; or

10 (3) any other immediate or actual circumstance or event which  
11 jeopardizes an investment made by the board.

12 (d) Projects for which financial assistance is granted shall  
13 comply with all applicable provisions of law.

14 Sec. 37.12.180. ELIGIBILITY FOR FINANCIAL ASSISTANCE. The board  
15 may provide financial assistance if it finds that an applicant is quali-  
16 fied to receive assistance. An applicant is qualified if

17 (1) he has submitted a proposal to the board in accordance  
18 with sec. 170(a)(1) of this chapter;

19 (2) he is a resident of the state for three years or, if the  
20 applicant is a partnership, corporation, or other association, the  
21 majority interest is beneficially owned by residents of the state and a  
22 majority of the owners are residents of the state; and

23 (3) his projects which have previously received financial  
24 assistance from the corporation, if any, have complied with all require-  
25 ments of that assistance and have performed with sufficient success or  
26 promise to warrant further aid.

27 Sec. 37.12.190. REPORTS AND PUBLICATIONS. (a) The board shall  
28 prepare and distribute in non-technical language materials describing  
29 the purposes and activities of the corporation.

1 (b) The board shall publish an annual report for the governor, the  
2 legislature, and the public at the time of submitting its annual budget  
3 request. Each annual report shall include financial statements and  
4 audit reports, a statement detailing the sources from which the corpora-  
5 tion received money, a statement detailing the investments made by the  
6 corporation, a summary and evaluation of the data required by sec.  
7 160(5) and (6) of this chapter, a list of public facilities required by  
8 or complementary to the corporation's investment activity, and any other  
9 information that the board of trustees believes would be of interest to  
10 the recipients of the report.

11 Sec. 37.12.200. BUDGET AND APPROPRIATIONS. (a) The corporation  
12 may expend money only as appropriated by the legislature. The corpora-  
13 tion is subject to the Executive Budget Act (AS 37.07) except as  
14 provided in (b) and (c) of this section.

15 (b) The budget of the corporation shall include the categories and  
16 amounts of proposed financial assistance broken down by financing  
17 mechanism and resource sector affected and all funds received by the  
18 corporation whether through allocations made by this chapter, appropria-  
19 tion, or otherwise. The total amount of the corporation's operating  
20 budget shall be specified separately in its budget and be appropriated  
21 from the general fund.

22 (c) The unexpended and unobligated portion of the appropriations,  
23 other than appropriations for operating expenses, does not lapse into  
24 the general fund at the end of a fiscal year, but remains available  
25 for appropriation as provided in this section in subsequent fiscal  
26 years.

27 Sec. 37.12.210. ANNUAL AUDIT. The corporation shall have its  
28 financial record audited annually by an independent outside auditor.  
29 The legislative auditor may prescribe the form and content of the finan-

1 cial record of the corporation and shall have access to these records at  
2 any time.

3 Sec. 37.12.220. COOPERATION WITH OTHER AGENCIES. All departments,  
4 agencies, and public corporations of the state shall provide information  
5 services and facilities to the corporation on its request. The corpora-  
6 tion shall reimburse the department, agency, or corporation for expenses  
7 reasonably incurred on the corporation's behalf.

8 Sec. 37.12.230. TAX EXEMPTION. The corporation is exempt from all  
9 taxes and assessments in the state. All security instruments issued by  
10 the corporation, their transfer, and their income are exempt from all  
11 taxes and assessments in the state.

12 Sec. 37.12.240. TECHNICAL ASSISTANCE. (a) The corporation may  
13 provide financing for pre-investment activities including feasibility  
14 studies, when, in its opinion, the proposed project is of high priority  
15 and the financing is not available from other sources on reasonable  
16 terms and conditions. Amounts so advanced may form a part of a later  
17 investment if the enterprise or project is financed by the corporation.

18 (b) The corporation may provide for technical and management  
19 advice and assistance to qualified applicants as it considers necessary  
20 in the circumstances.

21 Sec. 37.12.250. PUBLIC ACCESS TO INFORMATION. Information in the  
22 possession of the corporation is a public record, except that informa-  
23 tion which discloses the particulars of the business or affairs of a  
24 private enterprise or investor is confidential and is not a public  
25 record. Confidential information may be disclosed only for the purposes  
26 of an official law enforcement investigation or when its production is  
27 required in a court proceeding. These restrictions do not prohibit the  
28 publication of statistics presented in a manner that prevents the iden-  
29 tification of reports, items, persons, or enterprises.

1           Sec. 37.12.260. DEFINITIONS. In this chapter, unless the context  
2 otherwise requires,

3           (1) "applicant" means a person making application to the  
4 corporation for financial assistance;

5           (2) "board" means the Board of Trustees of the Alaska Renew-  
6 able Resources Corporation;

7           (3) "corporation" means the Alaska Renewable Resources Corpo-  
8 ration;

9           (4) "project" means products, markets, innovation, or tech-  
10 nological developments for the rehabilitation, enhancement, or develop-  
11 ment of renewable resources and includes applied research for those  
12 products, markets, or technological developments;

13           (5) "rehabilitation, enhancement, and development" means any  
14 activity or program which improves the health and well-being of a renew-  
15 able resource or renewable resource population leading to an increase in  
16 the quality or productivity of the resource and to an increase in the  
17 benefits derived from the resource to the citizens of the state;

18           (6) "renewable resource" means non-human living organisms;  
19 natural components of the environment, including the air, land, and  
20 water; and energy systems which are naturally recurring or replenished.

21 \* Sec. 2. AS 37.11.040 is amended to read:

22           Sec. 37.11.040. FUND BALANCES. Unappropriated or otherwise unen-  
23 cumbered balances remaining in the Alaska renewable resources development  
24 fund at the close of each fiscal year shall be transferred to the Alaska  
25 renewable resources investment [PERMANENT] fund.

26 \* Sec. 3. AS 37.11.050 is amended to read:

27           Sec. 37.11.050. ALASKA RENEWABLE RESOURCES INVESTMENT [PERMANENT]  
28 FUND. There is established as a separate fund the Alaska renewable re-  
29 sources investment [PERMANENT] fund. Funds apportioned by sec. 60 of

1 this chapter for deposit in the investment [PERMANENT] fund are to be  
2 held perpetually in trust for the benefit of both present and future  
3 generations of Alaskans.

4 \* Sec. 4. AS 37.11.060 is amended to read:

5 Sec. 37.11.060. FUND PRINCIPAL. Unappropriated or otherwise un-  
6 encumbered balances remaining in the Alaska renewable resources develop-  
7 ment fund at the close of each fiscal year shall be deposited in the  
8 investment [PERMANENT] fund. These deposits shall be considered fund  
9 principal and shall be invested in perpetuity by the Alaska Permanent  
10 Fund Corporation [IN ACCORDANCE WITH AS 37.10.070 (INVESTMENT OF SURPLUS  
11 STATE FUNDS)].

12 \* Sec. 5. AS 37.11.070 is amended to read:

13 Sec. 37.11.070. UTILIZATION OF FUND INCOME. Income received from  
14 investment of investment [PERMANENT] fund principal shall not be held in  
15 trust, but shall be used to provide funding for capital and operating  
16 appropriations for the rehabilitation, enhancement and development of  
17 renewable resources programs. Plans for expenditures from fund income  
18 shall be prepared in detail by the appropriate state department or  
19 agency and shall be submitted by the governor in accordance with the  
20 Executive Budget Act (AS 37.07) as part of his annual budget presenta-  
21 tion to the legislature.

22 \* Sec. 6. AS 37.11.080 is amended to read:

23 Sec. 37.11.080. PROTECTION OF PRINCIPAL. A transaction involving  
24 investment [PERMANENT] fund principal which results in an actual dollar  
25 loss of principal shall be reimbursed in full from fund income before  
26 any additional income is expended.

27 \* Sec. 7. AS 37.11 is amended by adding a new section to read:

28 Sec. 37.11.090. INVESTMENTS. Investment responsibility for the  
29 Alaska renewable resources investment fund shall reside with the

1 treasury division of the Department of Revenue. The treasury division  
2 may invest the Alaska renewable resources investment fund in any in-  
3 vestments authorized in AS 39.35.110 so long as its investment policy is  
4 consistent with the prudent-man rule.

5 \* Sec. 8. AS 44.66.010(a) is amended by adding a new paragraph to read:

6 (6) Alaska Renewable Resources Corporation (AS 37.12.030) --  
7 June 30, 1982.

Introduced: 1/25/78  
Referred: The Special Committee  
on the Permanent Fund and  
Finance

1 IN THE HOUSE

BY THE SPECIAL COMMITTEE ON  
THE ALASKA PERMANENT FUND

2 HOUSE BILL NO. 682

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to nonrenewable resource revenues."

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

8 \* Section 1. AS 37 is amended by adding a new chapter to read:

9 CHAPTER 12. ALASKA RENEWABLE RESOURCES CORPORATION.

10 Sec. 37.12.010. DECLARATION OF POLICY. It is the policy of the  
11 state to

12 (1) rehabilitate, enhance, and develop its renewable re-  
13 sources and, insofar as is consistent with sound resource management  
14 policies, develop its human resources by providing maximum opportunities  
15 for employment and a higher standard of living for its citizens; and

16 (2) utilize the funds set aside under ch. 11 of this title to  
17 further the (A) development of renewable resources that will contribute  
18 to a stable self-sustaining state economy, employment opportunities, and  
19 lifestyle alternatives for its citizens, and (B) commercial, tradi-  
20 tional, and common uses of the state's renewable resources.

21 Sec. 37.12.020. FINDINGS. (a) The legislature finds that Alaska  
22 has renewable resources that are not being utilized to their full poten-  
23 tial. Many problems which confront the state, including high unem-  
24 ployment and unstable economy, could be mitigated by the expanded use  
25 and development of its renewable resources.

26 (b) It is further found that Alaska's economy has historically  
27 depended upon sporadic and non-stable development.

28 (c) It is further found that several key factors have contributed  
29 to the slow development of renewable resource industries, including,

1 (1) reductions in research and development financing and  
2 venture capital financing;

3 (2) a lack of knowledge within the business and financial  
4 communities about conditions affecting renewable resource industrial  
5 development in the state; and

6 (3) a lack of technology appropriate to Alaska.

7 (d) It is further found that the state's policy of assisting the  
8 development of viable industries is best accomplished by providing  
9 assistance to the private sector to identify and demonstrate new pro-  
10 ducts, markets, and technologies.

11 Sec. 37.12.030. ALASKA RENEWABLE RESOURCES CORPORATION CREATED.

12 There is created the Alaska Renewable Resources Corporation to carry out  
13 the purposes of this chapter. The corporation is a public corporation  
14 of the state and an instrumentality of the state within the Department  
15 of Revenue, but has a legal existence independent of and separate from  
16 the state. The exercise by the corporation of the powers conferred by  
17 this chapter is considered an essential function of the state.

18 Sec. 37.12.040. PURPOSES. The purposes of the corporation are to

19 (1) facilitate the rehabilitation, enhancement, and develop-  
20 ment of the state's renewable resources so as to strengthen the self-sus-  
21 taining sectors of the state economy;

22 (2) sponsor research and development of technologies and  
23 innovations for the rehabilitation and enhancement of the state's renew-  
24 able resources to achieve their most appropriate use;

25 (3) identify new products, markets, and technologies for  
26 renewable resource industries in the state; stimulate the research and  
27 development of these products, markets, and technologies; assist in the  
28 demonstration of their technical and economic feasibility; and assist in  
29 their introduction into commercial markets.

1           Sec. 37.12.050. ALLOCATION. (a) There shall be allocated to the  
2 corporation from the receipts described in AS 37.11.020 five per cent of  
3 the receipts paid the state from mineral lease bonuses and rentals for  
4 state land and royalties derived from minerals produced on state land.  
5 Payments of the amount allocated by this section shall be made to the  
6 corporation by the Department of Revenue on a monthly basis.

7           (b) Fifty per cent of all actual receipts of the corporation, from  
8 whatever source, shall be deposited into the renewable resources invest-  
9 ment fund (AS 37.11.050).

10          Sec. 37.12.060. BOARD OF TRUSTEES. A board of trustees of the  
11 corporation is established as its governing body.

12          Sec. 37.12.070. COMPOSITION OF THE BOARD OF TRUSTEES. The board  
13 of trustees consists of three members appointed by the governor and  
14 confirmed by a majority of the members of the legislature in joint ses-  
15 sion. The board shall annually elect a chairman from among its members.  
16 A chairman may not succeed himself.

17          Sec. 37.12.080. TERM OF OFFICE. The members of the board of  
18 trustees shall be appointed for terms of four years, and they may be  
19 reappointed. Terms shall be staggered. The initial terms shall be one  
20 member serving for two years, one member serving for three years, and  
21 one member serving for four years.

22          Sec. 37.12.090. REMOVAL AND VACANCIES. (a) The governor may  
23 remove a board member from office by and with the consent of a majority  
24 of the members of the legislature in joint session. A removal by the  
25 governor shall be in writing and state the reason for removal. If the  
26 legislature is not in session, the governor may suspend a member of the  
27 board. Upon suspension, a board member may not participate in board  
28 business and may not be counted for the purpose of establishing a quo-  
29 rum. A suspended member shall continue to receive his salary as a board

1 member until the legislature in joint session consents to his removal.  
2 The joint session shall be held within 30 days from the date of removal  
3 if the removal occurs while the legislature is in session or within 30  
4 days of convening of the legislature if the legislature is not in ses-  
5 sion. If the legislature refuses to consent to his removal, the board  
6 member shall be reinstated to his position.

7 (b) A vacancy on the board shall be promptly filled by appointment  
8 by the governor and confirmation by a majority of members of the legis-  
9 lature in joint session. An appointee to fill a vacancy shall hold  
10 office for the balance of the term for which his predecessor on the  
11 board was appointed. If a vacancy arises on the board while the legis-  
12 lature is not in session, the governor may appoint an interim board  
13 member until such time as the legislature in joint session fails to  
14 confirm the interim member's appointment.

15 (c) A vacancy on the board does not impair the authority of a  
16 quorum of the board to exercise all the powers and perform all the  
17 duties of the board.

18 Sec. 37.12.100. QUALIFICATIONS OF BOARD MEMBERS. (a) No person  
19 may be appointed to the board who has not been a resident of the state  
20 for at least three years.

21 (b) No member of the board may hold any other state or federal  
22 office, position, or employment, whether elective or appointive, except  
23 as a member of the armed forces of the United States or the state.

24 Sec. 37.12.110. QUORUM. Two members of the board constitute a  
25 quorum for the transaction of business and the exercise of the powers  
26 and duties of the board.

27 Sec. 37.12.120. COMPENSATION OF BOARD MEMBERS. Board members are  
28 in the exempt service under AS 39.25 and receive an annual salary within  
29 Range 30 of the salary schedule for state employees established by

1 AS 39.27.011.

2 Sec. 37.12.130. EMPLOYMENT OF PERSONNEL. The board may employ and  
3 determine the salary of an executive director. The executive director  
4 may, with the approval of the board, select and employ additional staff  
5 as necessary. The executive director and all employees of the board are  
6 in the exempt service under AS 39.25.

7 Sec. 37.12.140. CONFLICTS OF INTEREST. (a) Members of the board  
8 of trustees are subject to the provisions of AS 39.50.

9 (b) No member or employee of the board may acquire an interest,  
10 direct or indirect, in a corporation, company, association, or project  
11 owned, controlled, or invested in by the corporation. If a member or  
12 employee owns or controls such an interest, he shall immediately dis-  
13 close the interest in writing to the board and refrain from participat-  
14 ing in any manner in any board activity relating to that interest.

15 Sec. 37.12.150. POWERS. In carrying out the corporate powers of  
16 the corporation, the board may

- 17 (1) adopt, alter, and use a corporate seal;  
18 (2) prescribe, adopt, amend, and repeal bylaws;  
19 (3) sue and be sued in the name of the corporation;  
20 (4) enter into any agreements necessary to the exercise of  
21 its powers and functions;  
22 (5) accept grants from and contract with the federal govern-  
23 ment and the state or its political subdivisions and to that end comply  
24 with the provisions of federal, state, or local programs where neces-  
25 sary, except that it may not enter into any agreements whereby any  
26 permanent state or local government position is funded or partially  
27 funded in connection with a project;

28 (6) accept grants and loans from other sources than those  
29 in (5) of this section to be held and used for the purposes of the

1 corporation;

2 (7) appear in behalf of the corporation before boards, com-  
3 missions, departments, or other agencies of municipal, state, or federal  
4 government;

5 (8) acquire, hold, use, lease, sell, or otherwise dispose of  
6 property of any kind, real, personal, or mixed, or any interest in it;

7 (9) hold, as a means of securing the providing of financial  
8 assistance, patents, copyrights, trademarks, royalties, or any other  
9 evidences of protection or exclusivity issued under the laws of the  
10 United States or any state or nation;

11 (10) prepare, publish, and distribute technical studies,  
12 reports, bulletins and other materials it considers appropriate;

13 (11) make financial assistance available in the form of grants,  
14 loans, loan guarantees, or other appropriate forms to public research  
15 and development groups in the state in order to facilitate investment by  
16 the board in specific projects which do not warrant direct supervision  
17 by the corporation;

18 (12) invest, in such form as it considers appropriate, in  
19 projects which have income-producing potential;

20 (13) provide grants only for projects or demonstration of  
21 projects which do not yet have income-producing potential but which are  
22 commercially promising or have potentially broad application to the  
23 public;

24 (14) adopt regulations to implement this chapter;

25 (15) deposit funds, or invest funds through the permanent fund  
26 (AS 37.13) in such obligations as it may determine;

27 (16) do all acts and things necessary or desirable to carry  
28 out the purposes of the corporation.

29 Sec. 37.12.160. DUTIES. In carrying out the purposes of this

1 chapter, the board shall

2 (1) seek to maintain the productivity of healthy renewable  
3 resources and expand the productivity of depleted or underutilized  
4 renewable resources;

5 (2) provide financial assistance for projects which the board  
6 finds will accomplish the purposes of the corporation as set out in sec.  
7 40 of this chapter;

8 (3) promote the utilization of the state's renewable re-  
9 sources in the state and the development of import substitution and  
10 export markets;

11 (4) annually prepare long-range operating and financial plans  
12 and the budget for the forthcoming year;

13 (5) monitor approved projects for compliance with this chap-  
14 ter and provide operational and performance evaluations (post-audits) of  
15 projects receiving financial assistance and an overall assessment,  
16 expressed in qualitative and quantitative terms, of the degree to which  
17 the purposes of the corporation, as set out in sec. 40 of this chapter,  
18 have been achieved; and

19 (6) attempt to fund activities which will tend to maximize  
20 returns to the state and local governments and its citizens in such  
21 forms as tax revenues and resident employment and income.

22 Sec. 37.12.170. FINANCIAL ASSISTANCE. (a) In providing financial  
23 assistance, the board shall

24 (1) consider the proposals of qualified applicants only after  
25 the applicant has submitted a detailed proposal in the form prescribed  
26 by the board; no assistance may be approved by the board unless it  
27 finds, in writing, that

28 (A) the proposed project, if successful, will further  
29 the purposes of the corporation as set out in sec. 40 of this

1 chapter;

2 (B) the application contains an adequate plan for pro-  
3 ject implementation, including, when applicable, a complete busi-  
4 ness, financial and marketing plan for commercial activities;

5 (C) private financing cannot reasonably be undertaken  
6 without aid or that financial participation is not otherwise avail-  
7 able;

8 (D) the applicant has agreed that if new renewable  
9 resource industrial activity results from the proposed project, his  
10 best efforts will be employed to keep that activity in the state  
11 for a minimum period of time specified by the board;

12 (E) the applicant demonstrates sufficient technical and  
13 business expertise to accomplish the objectives of the proposed  
14 project;

15 (F) all costs associated with and ancillary to the pro-  
16 ject and future obligations generated by the project have been  
17 identified, including any necessary operating, maintenance, or  
18 other support costs for the life of the project;

19 (G) potential resource use conflicts that may result  
20 from the proposed project are identified and evaluated, and when  
21 necessary, plans to mitigate or resolve those conflicts and to  
22 preserve for the future options for the use of the state's renew-  
23 able resources are included in the application;

24 (H) a proposed project involving the use of a renewable  
25 resource is an appropriate use of that resource;

26 (2) use the financial mechanism most appropriate to the  
27 conditions of the applicant and the proposed project and which will most  
28 effectively utilize the funds available; grants may be utilized when  
29 other mechanisms are not feasible and when the benefits of the grant

1 will accrue to the general public;

2 (3) consider regional preferences and priorities in evaluat-  
3 ing projects.

4 (b) The board may not

5 (1) invest more than five per cent of the resources of the  
6 corporation or \$1,500,000, whichever is less, in a single project or  
7 applicant unless the legislature has approved the investment by con-  
8 current resolution;

9 (2) invest in more than 25 per cent of the outstanding cor-  
10 porate stock or other corporate obligations issued by an applicant  
11 unless the legislature has approved the investment by concurrent resolu-  
12 tion;

13 (3) make a loan for a period in excess of 10 years unless the  
14 legislature has approved the loan by concurrent resolution;

15 (4) assume the responsibility for management of any project  
16 in which it has invested and may not exercise voting rights for that  
17 purpose or for any other purpose which is within the scope of managerial  
18 control; or

19 (5) provide funds to any state agency unless that expenditure  
20 is included in the corporation's annual budget.

21 (c) Nothing in this section prevents the board from taking such  
22 action and exercising such rights as it considers necessary for the  
23 protection of its financial interests in the event of

24 (1) actual or threatened default on any of the board's invest-  
25 ments;

26 (2) actual or threatened insolvency of a project in which the  
27 board has made an investment; or

28 (3) any other immediate or actual circumstance or event which  
29 jeopardizes an investment made by the board.

1 (d) Projects for which financial assistance is granted shall  
2 comply with all applicable provisions of law.

3 Sec. 37.12.180. ELIGIBILITY FOR FINANCIAL ASSISTANCE. The board  
4 may grant financial assistance if it finds that an applicant is quali-  
5 fied to receive assistance. An applicant is qualified if

6 (1) he has submitted a proposal to the board in accordance  
7 with sec. 170(a)(1) of this chapter;

8 (2) he is a resident of the state or, if the applicant is a  
9 partnership, corporation, or other association, it is owned by a major-  
10 ity who are residents of the state; and

11 (3) his projects which have previously received financial  
12 assistance from the corporation, if any, have complied with all require-  
13 ments of that assistance and have performed with sufficient success or  
14 promise to warrant further aid.

15 Sec. 37.12.190. REPORTS AND PUBLICATIONS. (a) The board shall  
16 prepare and distribute in non-technical language materials describing  
17 the purposes and activities of the corporation.

18 (b) The board shall publish an annual report for the governor, the  
19 legislature, and the public at the time of submitting its annual budget  
20 request. Each annual report shall include financial statements and  
21 audit reports, a statement detailing the sources from which the corpora-  
22 tion received money, a statement detailing the investments made by the  
23 corporation, a summary and evaluation of the data required by sec.  
24 160(5) and (6) of this chapter, and any other information that the board  
25 of trustees believes would be of interest to the recipients of the  
26 report.

27 Sec. 37.12.200. BUDGET AND APPROPRIATIONS. The corporation shall  
28 submit its annual budget to the legislature through the governor as pro-  
29 vided for state agencies by the Executive Budget Act (AS 37.07). The

1 budget shall include the categories and amounts of proposed financial  
2 assistance broken down by financing mechanism and resource sector af-  
3 fected and all funds received by the corporation whether through alloca-  
4 tions made by this chapter, appropriation, or otherwise. The corpora-  
5 tion may expend money directly appropriated by the legislature only as  
6 authorized by the legislature. The total amount of the corporation's  
7 operating budget shall be specified as a separate item of its budget and  
8 be appropriated from the general fund.

9 Sec. 37.12.210. ANNUAL AUDIT. The corporation shall have its  
10 financial record audited annually by a certified public accountant. The  
11 legislative auditor may prescribe the form and content of the financial  
12 record of the corporation and shall have access to these records at any  
13 time.

14 Sec. 37.12.220. COOPERATION WITH OTHER AGENCIES. All departments,  
15 agencies, and public corporations of the state shall provide information,  
16 services and facilities to the corporation on its request. The corpora-  
17 tion shall reimburse the department, agency, or corporation for expenses  
18 reasonably incurred on the corporation's behalf.

19 Sec. 37.12.230. DEFINITIONS. In this chapter, unless the context  
20 otherwise requires,

21 (1) "applicant" means a person making application to the  
22 corporation for financial assistance;

23 (2) "appropriate use" means (definition to be supplied by  
24 other source);

25 (3) "board" means the Board of Trustees of the Alaska Renew-  
26 able Resources Corporation;

27 (4) "corporation" means the Alaska Renewable Resources Corpo-  
28 ration;

29 (5) "project" means products, markets, innovation, or

1 technological developments for the rehabilitation, enhancement, or  
2 development of renewable resources and includes applied research for  
3 those products, markets, or technological developments;

4 (6) "rehabilitation, enhancement, and development" means any  
5 activity or program which improves the health and well-being of a renew-  
6 able resource or renewable resource population leading to an increase in  
7 the quality or productivity of the resource and to an increase in the  
8 benefits derived from the resource to the citizens of the state;

9 (7) "renewable resource" means non-human living organisms;  
10 natural components of the environment, including the air, land, and  
11 water; and energy systems which are naturally recurring or replenished.

12 \* Sec. 2. AS 37.11.040 is amended to read:

13 Sec. 37.11.040. FUND BALANCES. Unappropriated or otherwise unen-  
14 cumbered balances remaining in the Alaska renewable resources development  
15 fund at the close of each fiscal year shall be transferred to the Alaska  
16 renewable resources investment [PERMANENT] fund.

17 \* Sec. 3. AS 37.11.050 is amended to read:

18 Sec. 37.11.050. ALASKA RENEWABLE RESOURCES INVESTMENT [PERMANENT]  
19 FUND. There is established as a separate fund the Alaska renewable re-  
20 sources investment [PERMANENT] fund. Funds apportioned by sec. 60 of  
21 this chapter for deposit in the investment [PERMANENT] fund are to be  
22 held perpetually in trust for the benefit of both present and future  
23 generations of Alaskans.

24 \* Sec. 4. AS 37.11.060 is amended to read:

25 Sec. 37.11.060. FUND PRINCIPAL. Unappropriated or otherwise un-  
26 encumbered balances remaining in the Alaska renewable resources develop-  
27 ment fund at the close of each fiscal year shall be deposited in the  
28 investment [PERMANENT] fund. These deposits shall be considered fund  
29 principal and shall be invested in perpetuity in accordance with

1 AS 37.10.070 (investment of surplus state funds).

2 \* Sec. 5. AS 37.11.070 is amended to read:

3 Sec. 37.11.070. UTILIZATION OF FUND INCOME. Income received from  
4 investment of investment [PERMANENT] fund principal shall not be held  
5 in trust, but shall be used to provide funding for capital and operating  
6 appropriations for the rehabilitation, enhancement and development of  
7 renewable resources programs. Plans for expenditures from fund income  
8 shall be prepared in detail by the appropriate state department or agency  
9 and shall be submitted by the governor in accordance with the Executive  
10 Budget Act (AS 37.07) as part of his annual budget presentation to the  
11 legislature.

12 \* Sec. 6. AS 37.11.080 is amended to read:

13 Sec. 37.11.080. PROTECTION OF PRINCIPAL. A transaction involving  
14 investment [PERMANENT] fund principal which results in an actual dollar  
15 loss of principal shall be reimbursed in full from fund income before  
16 any additional income is expended.

17 \* Sec. 7. AS 44.66.010(a) is amended by adding a new paragraph to read:

18 (6) Alaska Renewable Resources Corporation (AS 37.12.030) --  
19 June 30, 1982.

20  
21  
22  
23  
24  
25  
26  
27  
28  
29

#

WO#4434  
Rosenstein /Vassar

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to nonrenewable resource revenues."

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

8 \* Section 1. AS 37 is amended by adding a new chapter to read:

9 CHAPTER 12. ALASKA RENEWABLE RESOURCES CORPORATION.

10 Sec. 37.12.010. DECLARATION OF POLICY. It is the policy of the  
11 state to

12 (1) rehabilitate, enhance, and develop its renewable re-  
13 sources and, insofar as is consistent with sound resource management  
14 policies, develop its human resources by providing maximum opportunities  
15 for employment and a higher standard of living for its citizens; and

16 (2) utilize the funds set aside under ch. 11 of this title to  
17 further the (A) development of renewable resources that will contribute  
18 to a stable self-sustaining state economy, employment opportunities, and  
19 lifestyle alternatives for its citizens, and (B) commercial, tradi-  
20 tional, and common uses of the state's renewable resources.

21 Sec. 37.12.020. FINDINGS. (a) The legislature finds that Alaska  
22 has renewable resources that are not being utilized to their full poten-  
23 tial. Many problems which confront the state, including high unem-  
24 ployment and unstable economy, could be mitigated by the expanded use  
25 and development of its renewable resources.

26 (b) It is further found that Alaska's economy has historically  
27 depended upon sporadic and non-stable development.

28 (c) It is further found that several key factors have contributed  
29 to the slow development of renewable resource industries, including,

1 (1) reductions in research and development financing and  
2 venture capital financing;

3 (2) a lack of knowledge within the business and financial  
4 communities about conditions affecting renewable resource industrial  
5 development in the state; and

6 (3) a lack of technology appropriate to Alaska.

7 (d) It is further found that the state's policy of assisting the  
8 development of viable industries is best accomplished by providing  
9 assistance to the private sector to identify and demonstrate new pro-  
10 ducts, markets, and technologies.

11 Sec. 37.12.030. ALASKA RENEWABLE RESOURCES CORPORATION CREATED.  
12 There is created the Alaska Renewable Resources Corporation to carry out  
13 the purposes of this chapter. The corporation is a public corporation  
14 of the state and an instrumentality of the state within the Department  
15 of Revenue, but has a legal existence independent of and separate from  
16 the state. The exercise by the corporation of the powers conferred by  
17 this chapter is considered an essential function of the state.

18 Sec. 37.12.040. PURPOSES. The purposes of the corporation are to

19 (1) facilitate the rehabilitation, enhancement, and develop-  
20 ment of the state's renewable resources so as to strengthen the self-sus-  
21 taining sectors of the state economy;

22 (2) sponsor research and development of technologies and  
23 innovations for the rehabilitation and enhancement of the state's renew-  
24 able resources to achieve their most appropriate use;

25 (3) identify new products, markets, and technologies for  
26 renewable resource industries in the state; stimulate the research and  
27 development of these products, markets, and technologies; assist in the  
28 demonstration of their technical and economic feasibility; and assist in  
29 their introduction into commercial markets.

1           Sec. 37.12.050. ALLOCATION. (a) There shall be allocated to the  
2 corporation from the receipts described in AS 37.11.020 five per cent of  
3 the receipts paid the state from mineral lease bonuses and rentals for  
4 state land and royalties derived from minerals produced on state land.  
5 Payments of the amount allocated by this section shall be made to the  
6 corporation by the Department of Revenue on a monthly basis.

7           (b) Fifty per cent of all actual receipts of the corporation, from  
8 whatever source, shall be deposited into the renewable resources invest-  
9 ment fund (AS 37.11.050).

10          Sec. 37.12.060. BOARD OF TRUSTEES. A board of trustees of the  
11 corporation is established as its governing body.

12          Sec. 37.12.070. COMPOSITION OF THE BOARD OF TRUSTEES. The board  
13 of trustees consists of three members appointed by the governor and  
14 confirmed by a majority of the members of the legislature in joint ses-  
15 sion. The board shall annually elect a chairman from among its members.  
16 A chairman may not succeed himself.

17          Sec. 37.12.080. TERM OF OFFICE. The members of the board of  
18 trustees shall be appointed for terms of four years, and they may be  
19 reappointed. Terms shall be staggered. The initial terms shall be one  
20 member serving for two years, one member serving for three years, and  
21 one member serving for four years.

22          Sec. 37.12.090. REMOVAL AND VACANCIES. (a) The governor may  
23 remove a board member from office by and with the consent of a majority  
24 of the members of the legislature in joint session. A removal by the  
25 governor shall be in writing and state the reason for removal. If the  
26 legislature is not in session, the governor may suspend a member of the  
27 board. Upon suspension, a board member may not participate in board  
28 business and may not be counted for the purpose of establishing a quo-  
29 rum. A suspended member shall continue to receive his salary as a board

1 member until the legislature in joint session consents to his removal.  
2 The joint session shall be held within 30 days from the date of removal  
3 if the removal occurs while the legislature is in session or within 30  
4 days of convening of the legislature if the legislature is not in ses-  
5 sion. If the legislature refuses to consent to his removal, the board  
6 member shall be reinstated to his position.

7 (b) A vacancy on the board shall be promptly filled by appointment  
8 by the governor and confirmation by a majority of members of the legis-  
9 lature in joint session. An appointee to fill a vacancy shall hold  
10 office for the balance of the term for which his predecessor on the  
11 board was appointed. If a vacancy arises on the board whi. the legis-  
12 lature is not in session, the governor may appoint an interim board  
13 member until such time as the legislature in joint session fails to  
14 confirm the interim member's appointment.

15 (c) A vacancy on the board does not impair the authority of a  
16 quorum of the board to exercise all the powers and perform all the  
17 duties of the board.

18 Sec. 37.12.100. QUALIFICATIONS OF BOARD MEMBERS. (a) No person  
19 may be appointed to the board who has not been a resident of the state  
20 for at least three years.

21 (b) No member of the board may hold any other state or federal  
22 office, position, or employment, whether elective or appointive, except  
23 as a member of the armed forces of the United States or the state.

24 Sec. 37.12.110. QUORUM. Two members of the board constitute a  
25 quorum for the transaction of business and the exercise of the powers  
26 and duties of the board.

27 Sec. 37.12.120. COMPENSATION OF BOARD MEMBERS. Board members are  
28 in the exempt service under AS 39.25 and receive an annual salary within  
29 Range 30 of the salary schedule for state employees established by

1 AS 39.27.011.

2 Sec. 37.12.130. EMPLOYMENT OF PERSONNEL. The board may employ and  
3 determine the salary of an executive director. The executive director  
4 may, with the approval of the board, select and employ additional staff  
5 as necessary. The executive director and all employees of the board are  
6 in the exempt service under AS 39.25.

7 Sec. 37.12.140. CONFLICTS OF INTEREST. (a) Members of the board  
8 of trustees are subject to the provisions of AS 39.50.

9 (b) No member or employee of the board may acquire an interest,  
10 direct or indirect, in a corporation, company, association, or project  
11 owned, controlled, or invested in by the corporation. If a member or  
12 employee owns or controls such an interest, he shall immediately dis-  
13 close the interest in writing to the board and refrain from participat-  
14 ing in any manner in any board activity relating to that interest.

15 Sec. 37.12.150. POWERS. In carrying out the corporate powers of  
16 the corporation, the board may

- 17 (1) adopt, alter, and use a corporate seal;  
18 (2) prescribe, adopt, amend, and repeal bylaws;  
19 (3) sue and be sued in the name of the corporation;  
20 (4) enter into any agreements necessary to the exercise of  
21 its powers and functions;  
22 (5) accept grants from and contract with the federal govern-  
23 ment and the state or its political subdivisions and to that end comply  
24 with the provisions of federal, state, or local programs where neces-  
25 sary, except that it may not enter into any agreements whereby any  
26 permanent state or local government position is funded or partially  
27 funded in connection with a project;  
28 (6) accept grants and loans from other sources than those  
29 in (5) of this section to be held and used for the purposes of the

1 corporation;

2 (7) appear in behalf of the corporation before boards, com-  
3 missions, departments, or other agencies of municipal, state, or federal  
4 government;

5 (8) acquire, hold, use, lease, sell, or otherwise dispose of  
6 property of any kind, real, personal, or mixed, or any interest in it;

7 (9) hold, as a means of securing the providing of financial  
8 assistance, patents, copyrights, trademarks, royalties, or any other  
9 evidences of protection or exclusivity issued under the laws of the  
10 United States or any state or nation;

11 (10) prepare, publish, and distribute technical studies,  
12 reports, bulletins and other materials it considers appropriate;

13 (11) make financial assistance available in the form of grants,  
14 loans, loan guarantees, or other appropriate forms to public research  
15 and development groups in the state in order to facilitate investment by  
16 the board in specific projects which do not warrant direct supervision  
17 by the corporation;

18 (12) invest, in such form as it considers appropriate, in  
19 projects which have income-producing potential;

20 (13) provide grants only for projects or demonstration of  
21 projects which do not yet have income-producing potential but which are  
22 commercially promising or have potentially broad application to the  
23 public;

24 (14) adopt regulations to implement this chapter;

25 (15) deposit funds, or invest funds through the permanent fund  
26 (AS 37.13) in such obligations as it may determine;

27 (16) do all acts and things necessary or desirable to carry  
28 out the purposes of the corporation.

29 Sec. 37.12.160. DUTIES. In carrying out the purposes of this

1 chapter, the board shall

2 (1) seek to maintain the productivity of healthy renewable  
3 resources and expand the productivity of depleted or underutilized  
4 renewable resources;

5 (2) provide financial assistance for projects which the board  
6 finds will accomplish the purposes of the corporation as set out in sec.  
7 40 of this chapter;

8 (3) promote the utilization of the state's renewable re-  
9 sources in the state and the development of import substitution and  
10 export markets;

11 (4) annually prepare long-range operating and financial plans  
12 and the budget for the forthcoming year;

13 (5) monitor approved projects for compliance with this chap-  
14 ter and provide operational and performance evaluations (post-audits) of  
15 projects receiving financial assistance and an overall assessment,  
16 expressed in qualitative and quantitative terms, of the degree to which  
17 the purposes of the corporation, as set out in sec. 40 of this chapter,  
18 have been achieved; and

19 (6) attempt to fund activities which will tend to maximize  
20 returns to the state and local governments and its citizens in such  
21 forms as tax revenues and resident employment and income.

22 Sec. 37.12.170. FINANCIAL ASSISTANCE. (a) In providing financial  
23 assistance, the board shall

24 (1) consider the proposals of qualified applicants only after  
25 the applicant has submitted a detailed proposal in the form prescribed  
26 by the board; no assistance may be approved by the board unless it  
27 finds, in writing, that

28 (A) the proposed project, if successful, will further  
29 the purposes of the corporation as set out in sec. 40 of this

1 chapter;

2 (B) the application contains an adequate plan for pro-  
3 ject implementation, including, when applicable, a complete busi-  
4 ness, financial and marketing plan for commercial activities;

5 (C) private financing cannot reasonably be undertaken  
6 without aid or that financial participation is not otherwise avail-  
7 able;

8 (D) the applicant has agreed that if new renewable  
9 resource industrial activity results from the proposed project, his  
10 best efforts will be employed to keep that activity in the state  
11 for a minimum period of time specified by the board;

12 (E) the applicant demonstrates sufficient technical and  
13 business expertise to accomplish the objectives of the proposed  
14 project;

15 (F) all costs associated with and ancillary to the pro-  
16 ject and future obligations generated by the project have been  
17 identified, including any necessary operating, maintenance, or  
18 other support costs for the life of the project;

19 (G) potential resource use conflicts that may result  
20 from the proposed project are identified and evaluated, and when  
21 necessary, plans to mitigate or resolve those conflicts and to  
22 preserve for the future options for the use of the state's renew-  
23 able resources are included in the application;

24 (H) a proposed project involving the use of a renewabl  
25 resource is an appropriate use of that resource;

26 (2) use the financial mechanism most appropriate to the  
27 conditions of the applicant and the proposed project and which will most  
28 effectively utilize the funds available; grants may be utilized when  
29 other mechanisms are not feasible and when the benefits of the grant

1 will accrue to the general public;

2 (3) consider regional preferences and priorities in evaluat-  
3 ing projects.

4 (b) The board may not

5 (1) invest more than five per cent of the resources of the  
6 corporation or \$1,500,000, whichever is less, in a single project or  
7 applicant unless the legislature has approved the investment by con-  
8 current resolution;

9 (2) invest in more than 25 per cent of the outstanding cor-  
10 porate stock or other corporate obligations issued by an applicant  
11 unless the legislature has approved the investment by concurrent resolu-  
12 tion;

13 (3) make a loan for a period in excess of 10 years unless the  
14 legislature has approved the loan by concurrent resolution;

15 (4) assume the responsibility for management of any project  
16 in which it has invested and may not exercise voting rights for that  
17 purpose or for any other purpose which is within the scope of managerial  
18 control; or

19 (5) provide funds to any state agency unless that expenditure  
20 is included in the corporation's annual budget.

21 (c) Nothing in this section prevents the board from taking such  
22 action and exercising such rights as it considers necessary for the  
23 protection of its financial interests in the event of

24 (1) actual or threatened default on any of the board's invest-  
25 ments;

26 (2) actual or threatened insolvency of a project in which the  
27 board has made an investment; or

28 (3) any other immediate or actual circumstance or event which  
29 jeopardizes an investment made by the board.

1 (d) Projects for which financial assistance is granted shall  
2 comply with all applicable provisions of law.

3 Sec. 37.12.180. ELIGIBILITY FOR FINANCIAL ASSISTANCE. The board  
4 may grant financial assistance if it finds that an applicant is quali-  
5 fied to receive assistance. An applicant is qualified if

6 (1) he has submitted a proposal to the board in accordance  
7 with sec. 170(a)(1) of this chapter;

8 (2) he is a resident of the state or, if the applicant is a  
9 partnership, corporation, or other association, it is owned by a major-  
10 ity who are residents of the state; and

11 (3) his projects which have previously received financial  
12 assistance from the corporation, if any, have complied with all require-  
13 ments of that assistance and have performed with sufficient success or  
14 promise to warrant further aid.

15 Sec. 37.12.190. REPORTS AND PUBLICATIONS. (a) The board shall  
16 prepare and distribute in non-technical language materials describing  
17 the purposes and activities of the corporation.

18 (b) The board shall publish an annual report for the governor, the  
19 legislature, and the public at the time of submitting its annual budget  
20 request. Each annual report shall include financial statements and  
21 audit reports, a statement detailing the sources from which the corpora-  
22 tion received money, a statement detailing the investments made by the  
23 corporation, a summary and evaluation of the data required by sec.  
24 160(5) and (6) of this chapter, and any other information that the board  
25 of trustees believes would be of interest to the recipients of the  
26 report.

27 Sec. 37.12.200. BUDGET AND APPROPRIATIONS. The corporation shall  
28 submit its annual budget to the legislature through the governor as pro-  
29 vided for state agencies by the Executive Budget Act (AS 37.07). The

1 budget shall include the categories and amounts of proposed financial  
2 assistance broken down by financing mechanism and resource sector af-  
3 fected and all funds received by the corporation whether through alloca-  
4 tions made by this chapter, appropriation, or otherwise. The corpora-  
5 tion may expend money directly appropriated by the legislature only as  
6 authorized by the legislature. The total amount of the corporation's  
7 operating budget shall be specified as a separate item of its budget and  
8 be appropriated from the general fund.

9 Sec. 37.12.210. ANNUAL AUDIT. The corporation shall have its  
10 financial record audited annually by a certified public accountant. The  
11 legislative auditor may prescribe the form and content of the financial  
12 record of the corporation and shall have access to these records at any  
13 time.

14 Sec. 37.12.220. COOPERATION WITH OTHER AGENCIES. All departments,  
15 agencies, and public corporations of the state shall provide information,  
16 services and facilities to the corporation on its request. The corpora-  
17 tion shall reimburse the department, agency, or corporation for expenses  
18 reasonably incurred on the corporation's behalf.

19 Sec. 37.12.230. DEFINITIONS. In this chapter, unless the context  
20 otherwise requires,

21 (1) "applicant" means a person making application to the  
22 corporation for financial assistance;

23 (2) "appropriate use" means (definition to be supplied by  
24 other source);

25 (3) "board" means the Board of Trustees of the Alaska Renew-  
26 able Resources Corporation;

27 (4) "corporation" means the Alaska Renewable Resources Corpo-  
28 ration;

29 (5) "project" means products, markets, innovation, or

1 technological developments for the rehabilitation, enhancement, or  
2 development of renewable resources and includes applied research for  
3 those products, markets, or technological developments;

4 (6) "rehabilitation, enhancement, and development" means any  
5 activity or program which improves the health and well-being of a renew-  
6 able resource or renewable resource population leading to an increase in  
7 the quality or productivity of the resource and to an increase in the  
8 benefits derived from the resource to the citizens of the state;

9 (7) "renewable resource" means non-human living organisms;  
10 natural components of the environment, including the air, land, and  
11 water; and energy systems which are naturally recurring or replenished.

12 \* Sec. 2. AS 37.11.040 is amended to read:

13 Sec. 37.11.040. FUND BALANCES. Unappropriated or otherwise unen-  
14 cumbered balances remaining in the Alaska renewable resources development  
15 fund at the close of each fiscal year shall be transferred to the Alaska  
16 renewable resources investment [PERMANENT] fund.

17 \* Sec. 3. AS 37.11.050 is amended to read:

18 Sec. 37.11.050. ALASKA RENEWABLE RESOURCES INVESTMENT [PERMANENT]  
19 FUND. There is established as a separate fund the Alaska renewable re-  
20 sources investment [PERMANENT] fund. Funds apportioned by sec. 60 of  
21 this chapter for deposit in the investment [PERMANENT] fund are to be  
22 held perpetually in trust for the benefit of both present and future  
23 generations of Alaskans.

24 \* Sec. 4. AS 37.11.060 is amended to read:

25 Sec. 37.11.060. FUND PRINCIPAL. Unappropriated or otherwise un-  
26 encumbered balances remaining in the Alaska renewable resources develop-  
27 ment fund at the close of each fiscal year shall be deposited in the  
28 investment [PERMANENT] fund. These deposits shall be considered fund  
29 principal and shall be invested in perpetuity in accordance with

1 AS 37.10.070 (investment of surplus state funds).

2 \* Sec. 5. AS 37.11.070 is amended to read:

3 Sec. 37.11.070. UTILIZATION OF FUND INCOME. Income received from  
4 investment of investment [PERMANENT] fund principal shall not be held  
5 in trust, but shall be used to provide funding for capital and operating  
6 appropriations for the rehabilitation, enhancement and development of  
7 renewable resources programs. Plans for expenditures from fund income  
8 shall be prepared in detail by the appropriate state department or agency  
9 and shall be submitted by the governor in accordance with the Executive  
10 Budget Act (AS 37.07) as part of his annual budget presentation to the  
11 legislature.

12 \* Sec. 6. AS 37.11.080 is amended to read:

13 Sec. 37.11.080. PROTECTION OF PRINCIPAL. A transaction involving  
14 investment [PERMANENT] fund principal which results in an actual dollar  
15 loss of principal shall be reimbursed in full from fund income before  
16 any additional income is expended.

17 \* Sec. 7. AS 44.66.010(a) is amended by adding a new paragraph to read:

18 (6) Alaska Renewable Resources Corporation (AS 37.12.030) --  
19 June 30, 1982.

## THE ALASKA RENEWABLE RESOURCES CORPORATION

### A PROPOSAL

#### OVERVIEW - RENEWABLE RESOURCES: PROMISE AND PROBLEMS

Alaskan economic history has been wrought with boom/bust cycles, resource exploitation, and seasonal and high unemployment. These conditions still exist in 1977. Alaskans realize that the present wealth of oil revenues will not last and, as reflected in many polls, believe that renewable resource development holds out the greatest promises for long range stability in Alaska.

Renewable resources, such as fish, timber, agriculture, and energy sources, are diffused throughout the State and thus offer possibilities for employment, long-term stability, and environmental compatibility State-wide, particularly in the most underdeveloped areas. While landings and value for most fishery harvests have increased over recent years, Alaskans are impatient to realize the potential three-fold increase in the fishery sector promised by the 200 Mile Limit. Only 17,000 of the 15 million acres of potentially arable lands are presently utilized for agriculture. In many areas of the State, renewable energy and timber resources are unutilized.

With such desires and promises surrounding the development of Alaska's renewable resources, what is holding us up? What is the problem?

There are several problems.

Page Two

Major uncertainties face individuals, businesses, and government seeking to expand the renewable resource sectors of our economy. Uncertainty over land ownership, and a myriad of regulatory actions, surround renewable resources development activity. Lack of knowledge or experience makes for unacceptably high risks in areas of even immediate potential such as Alaska's bottom fishery. Government agencies lack sufficient information to back up resource development efforts. These risks and uncertainties result in a lack of available capital for both starting new businesses and for expanding existing ones.

Alaska's lack of a large supply of experienced entrepreneurs and managers further reduces investor interest or confidence. Necessary infrastructure, such as transportation facilities and service industries, are absent in many areas of Alaska. Also, the widespread reduction in research and development spending by both the private and public sectors since the early 1970's threatens expansion into Alaska's economic frontiers.

There are many actions the State performs or will perform to accelerate the development of our renewable resources. General Fund expenditures continue to fund capital projects creating infrastructure, such as transportation and energy systems, which are necessary to economic activity. Government expenditures at several levels fund many agencies increasing knowledge about our resources and improving resource management techniques. Existing State loan programs and new programs

Page Three

to be debated in the upcoming legislative session expand the availability of capital for Alaska businesses. Permanent Fund monies will be available, but because of the Constitutional requirement, the funds may only be invested in financially sound, proven business ventures.

None of these aids are capable of resolving the uncertainties that presently inhibit renewable resource developments. The Renewable Resources Development Fund (RRDF) created by the Legislature in 1973 for the "rehabilitation, enhancement, and development of Alaska's renewable resources" can fill this gap. Unlike the Permanent Fund, the RRDF does not have to be invested in a safe, income producing manner. With this flexibility, the Subcommittee on the RRDF proposes to apply the RRDF to the earliest and riskiest and neediest stage in the development of renewable resources. Fund dollars\* allocated by the Alaska Renewable Resources Corporation (ARRC) will be used to assist the development and demonstration of techniques and innovations for the rehabilitation, enhancement, or maintenance of renewable resources systems and the identification, development, demonstration, and introduction of new products, markets, or technologies for renewable resources industries in Alaska.

This proposal seeks to match individual Alaskans, their ideas and energies, with our vast opportunities for renewable resources development. By providing small demonstration grants and loans tailored to existing and potential renewable resources users and

\* see Appendix III for projections.

Page Four

government agencies, the ARRC will provide a presently missing link between new ideas, innovations, and business ventures and the existing Alaskan economy. ARRC funding will be the leading edge in the State's efforts to manage renewable resources systems and to stimulate renewable resources development by providing Alaskans with an ability to prove that their ideas and efforts can mature into viable, self-sustaining economic pursuits. In filling this gap, the ARRC will facilitate the long range rehabilitation, enhancement, and development of Alaska's renewable resources and assist Alaskan private enterprise to create a self-sustaining Alaskan economy benefitting both present and future generations of Alaska.

The charts in Appendix I are offered to familiarize the reader with the processes of innovation and business formation.

#### THE LEADING EDGE CONCEPT

As anyone who tries to obtain financing in Alaska knows, capital is not very easy to come by. This is especially true for high risk or new, unproven enterprises. The leading edge concept addresses this aspect of the problem by creating a linkage between the idea and the marketplace. Leading edge investments include both risk capital and technical assistance to people and organizations with innovative ideas to be tested and demonstrated, so that major uncertainties preventing private financing can be resolved. Such investment increases the supply of financing for new products, experiments, trial production, prototypes,

Page Five

technologies, processes, etc., and also promotes entrepreneurship to implement risky opportunities by increasing the supply of competent managers and businessmen. It also generates new information to assist resource managers.

Leading edge investment can play three basic roles. First, it can play the part of a catalyst bringing opportunities and people together. In the development process, credible examples of success play a crucial role, as the proliferation of grocery stores in the bush demonstrates. Familiarity in the business world is self-reinforcing, especially in investment activity. Thus leading edge investments must identify and demonstrate viable examples of renewable resource <sup>development</sup> and disseminate information about them.

A second role involves the provision of risk capital for financing new and innovative projects. Leading edge investments provide pilot project and start-up capital which is so sorely lacking in Alaska. Large businessmen and proven entrepreneurs can sometimes obtain risk capital from private lending institutions. It new entrepreneurs and small firms traditionally must come up with their own resources. Thus large numbers of new, potential businesses and small firms seeking to expand are severely constrained by the lack of such sources in Alaska. Leading edge investment in Alaska would break open this narrow field of entry and opportunity.

A third role is the provision of adequate managerial and technical assistance (through outside contract, see Appendix II), to individuals, firms, or agencies attempting to implement new ideas. Leading edge investments include both inexperienced individuals making a first attempt at demonstrating an idea or launching a business venture, and experienced businessmen or researchers entering into a new or unfamiliar area. Both cases will require assistance from sources experienced in either the type of project or its various components. Provision of such assistance will result both in more successful projects and in a general increase in the technical and managerial competence of Alaskans who must compete with outside interests.

For a closer look at possible types of leading edge investments, the following table is offered: (see Appendix IV for abstracts of two actual proposals).

TYPES OF LEADING EDGE INVESTMENT

<u>Area of Investment</u>	<u>Activity</u>	<u>Outcome</u>
Applied Research and Development	Development, Verification, and Application	Refinement or use by public or private sectors
New Products	Development, Demonstration, Introduction for market test	New goods and services available for production and/or consumption by Alaskans
New Markets	Market research, Pilot projects	New areas of economic activity in Alaska for import substitution and export markets
New Technologies, Processes, or Techniques	Develop and Demonstrate	New resource management, harvesting, processing, or production techniques for the private or public sectors

Page Seven

All leading edge investments are intended to either expand resource populations, expand existing small firms, start new firms, or produce innovations or knowledge for use by the public and government agencies.

By focusing on the ideas, efforts and conditions of Alaskans and Alaskan firms, leading edge investment will promote self-reliance, diversity, and self-sustaining economic activities. The State can better aid its residents by directly increasing their opportunities instead of attracting outside developers. By focusing on innovation and information to aid the State and other governments in the rehabilitation and enhancement of Alaska's renewable resources, such investment will improve the ability of the public sector to manage our renewable resources and the conditions of our resource population.

Leading edge investment is only one aspect of the entire range of financial aid available to the private sector. There are approximately ten State loan programs loaning to Alaskan businesses. In addition, during the upcoming legislative session the Legislature will consider several proposals for management and use of the Permanent Fund. All of these proposals include programs to serve those capital needs of established Alaskan business still unmet by private financial institutions and existing State loan programs. Finally, the established Alaskan business sector does receive the bulk of its financing from the private sector. Seen in this context, the leading edge investments make good sense by providing the early missing link between new ideas and capital markets.

OTHER GOVERNMENT EXPERIENCE

The ideas of leading edge investment and the promotion of entrepreneurship are not new. Fifteen national governments, including Great Britain, France, and Japan have programs designed to give financial and management aid to firms during the early stages of business formation. The National Research Development Corporation of Great Britain has considered over 32,000 inventions since 1949, acquired patent rights in 20% of them, completed 1600 license agreements, and has entered into 340 joint venture projects. In FY 1974, it received \$22.5 million in license and joint venture income, \$8.7 in excess of project development and administration expenditures. The Nova Scotia Department of Development is presently engaged in a program to facilitate business formation and entrepreneurship. In Ohio, an Ohio Entrepreneurship Office was created as an experiment between 1972 and 1974 and resulted in the creation of several new companies, increased financing of Ohio firms by Ohio banks, the development of new products and services, new enterprise courses in twelve universities, and aided in the creation of 3000 new jobs at an approximate cost of \$15 per job. Another program, Project New Enterprise, of the Indianapolis Center for Advanced Research, facilitates the commercialization of ideas by fostering research, evaluating inventions and ideas, and providing managerial and financial assistance. They are presently assisting over ninety independent inventors.

THE ALASKA RENEWABLE RESOURCES CORPORATION

The Alaska Renewable Resources Corporation is the institution proposed by the Subcommittee to make leading edge investments. It will be a public corporation designed to allocate RRDF monies in a flexible, responsive, and efficient manner. The functions and organization of the Corporation were formulated to minimize administrative overhead and put Fund monies to their most productive uses. The ARRC will be managed by a three member Board of Directors assisted by a small staff. Much of the substantive work required by leading edge investments, such as identifying opportunities, evaluating highly technical proposals, and providing technical assistance will be performed under contract by other government agencies or by firms in the private sector.

There are a series of functions that the ARRC must perform to guarantee that investments are made wisely. At its inception, and then periodically throughout its operations, the ARRC must analyze the status of renewable resources industries in Alaska and the market for renewable resources-based products and innovations. Such analysis will yield an overview of the problems and opportunities in renewable resources sectors and provide information needed by the ARRC to concentrate investments in areas of high potential.

The ARRC must also have the capability to structure its investments, both grants and loans, to best meet the needs and conditions of its applicants. This capability must combine the foresight and creativity of a research and development foundation with the comprehensive and

Page Ten

and practical business skills of the venture capitalist. While meeting the needs of applicants, the ARRC must seek a maximum return on investment consistent with the goals of the program.

A third and critical function of the ARRC will be to evaluate the various projects and their proponents seeking ARRC assistance. Because leading edge investments target on promising but unproven ideas, funding will be based solely on the potential of the projects and the people behind them. Thus careful evaluation of the technical, financial, management, and market components of each projects is needed to minimize losses to both the ARRC and its applicants.

Because there are so many existing sources of technical assistance (see Appendix II), the ARRC need not have in-house capability to provide these services. However, ARRC managers must be able to perceive the technical and managerial weaknesses of applicants and determine the type of technical assistance needed. Private and other government sources can then be contracted with to provide the needed services to assist applicants in project formulation and implementation.

Since many areas of Alaska are remote and contain culturally diverse people, the ARRC must be active in informing all Alaskans about the opportunities it offers. Such activities could include simple

Page Eleven

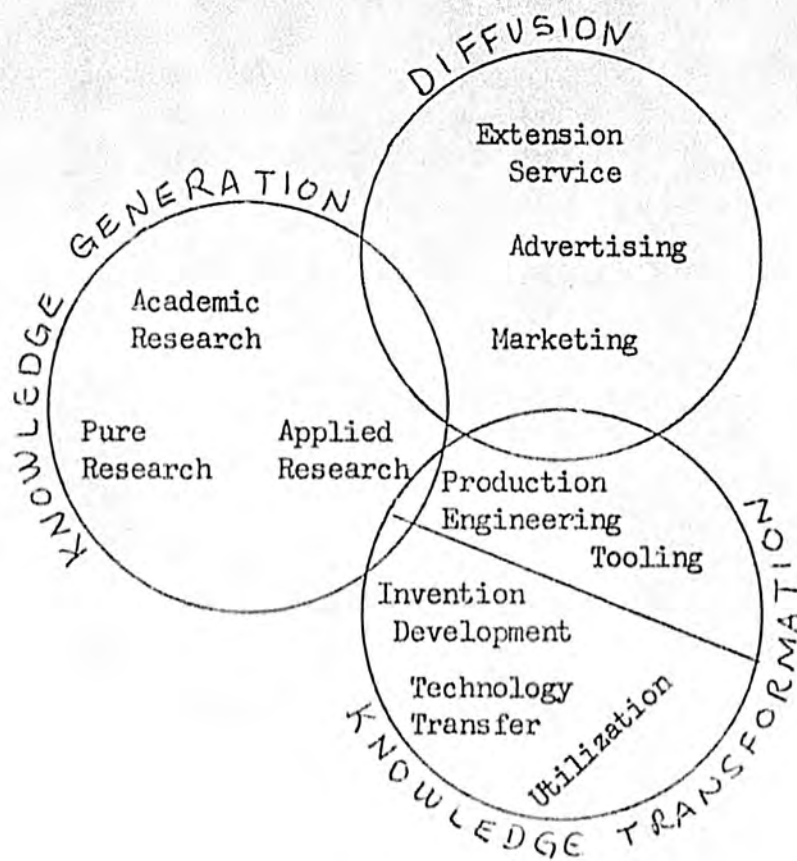
pamphlets, periodic boondoggles, and posters or notices in places of public gathering.

The use of public monies for investments is to accomplish more than economic development of our renewable resources. In the required evaluation process the ARRC must also analyze proposals for their effect on other goals prescribed by the Legislature. The ARRC must evaluate proposals in terms of the distribution of benefits flowing from the ARRC investments, the promotion of Alaska resources in in-State use, the inclusion of local and regional preferences in funding decisions, and the mitigation of resource use conflicts imbedded in development activities.

A final function of the ARRC will be to record its progress towards achieving its purposes. Establishing measurement criteria for success and failure, monitoring each project to insure proper implementation, and reporting investment activities and final results will all contribute to the accountability of the ARRC to the Governor, the Legislature, and the people of Alaska. The ultimate accountability of the ARRC will be the fact that its budgets, both operating and investment, will be subject to the Executive Budget Act. The Administration and Legislature by means of the reporting procedures and budget analysis will be able to judge whether the ARRC is meeting the goals established in the enabling legislation and whether it is operating efficiently.

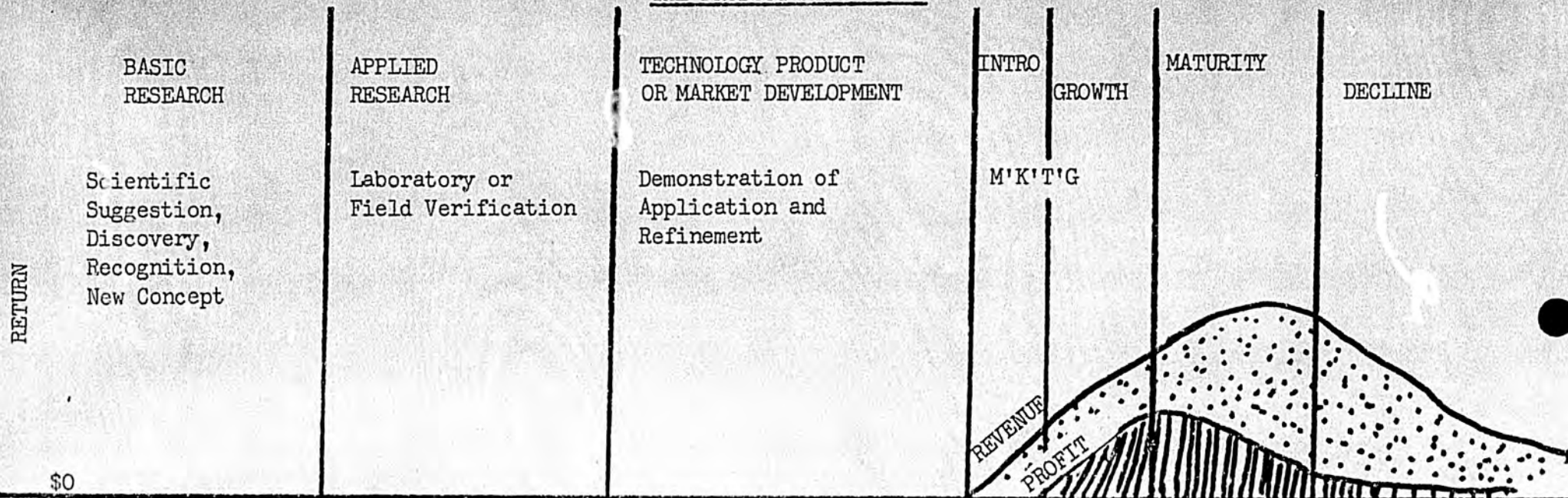
APPENDIX I

FIGURE 1: THE INNOVATION PROCESS



APPENDIX I (Cont'd)

THE PRODUCT LIFE CYCLE



Source: 1969 World Outlook Report  
 William McLoughlin, Corporate Plans Office LTV, INC.



APPENDIX II

TECHNICAL ASSISTENCE PROGRAMS AVAILABLE IN ALASKA

State: Department of Commerce and Economic Development  
Division of Economic Enterprise  
Development Specialists in: Transportation  
Internal trade  
Minerals  
Fisheries  
Agriculture  
Small Business

Private: Alaska and outside management consulting firms  
ANSCA Corps. and the Alaska Native Foundation  
Community Enterprise Development Corporation

Federal: 4.9 Catalog of Federal Domestic Assistance. The "Catalog of Federal Domestic Assistance" provides a comprehensive listing and description of Federal programs, activities, and funding which relate to management and technical assistance. For ready reference following are pertinent Agency program titles and section numbers as shown in the catalog:

- 10.500 - Department of Agriculture - Cooperative Extension Service
- 11.104 - Department of Commerce - Domestic and International Business Administration (Business Assistance Services and Information)
- 11.303 - Economic Development Administration - U. S. Department of Commerce (Technical Assistance)
- 11.411 - National Oceanic and Atmospheric Administration - Department of Commerce (Fishery Cooperative Service)
- 11.800 - OMBE - Office of Minority Business Enterprise
- 39.001 - General Services Administration - (Business Services)
- 59.005 - SBA - Management Assistance to Small Business
- 59.006 - SBA - Minority Business Development - Procurement Assistance
- 59.007 - SBA - Management and Technical Assistance for Disadvantaged Businessmen
- 59.019 - SBA - Minority Vendors Program
- 72.006 - Action - (Score and ACE)

APPENDIX III

POSSIBLE CONTRIBUTIONS TO THE RENEWABLE RESOURCES DEVELOPMENT FUND\*

Three Cases\*\* (Figures in millions of dollars)

F/Y	Case I (Low Income, High Expenditure Model)		Case II (Medium Income, Medium Expenditure Model)		Case III (High Income, Low Expenditure Model)	
	<u>RRDF Contribution</u>	<u>RRDF Balance</u>	<u>RRDF Contribution</u>	<u>RRDF Balance</u>	<u>RRDF Contribution</u>	<u>RRDF Balance</u>
1978	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
1979	16.7	16.7	20.9	20.9	23.2	23.2
1980	19.4	36.0	24.6	45.4	29.4	52.6
1981	19.8	55.8	25.4	70.8	30.8	83.4
1982	20.1	75.9	26.2	97.1	34.1	117.5
1983	20.8	96.7	27.3	124.4	37.9	155.5
1984	21.3	118.1	28.4	152.8	42.0	197.4
1985	<u>21.8</u>	<u>139.9</u>	<u>29.3</u>	<u>182.1</u>	<u>43.9</u>	<u>241.4</u>
TOTAL	N/A	\$139.9	N/A	\$182.1	N/A	\$241.4

\* Derived from November 17, 1977 memo from Dick Haggart to Clark Gruening.

\*\* The amounts projected here are significantly lower than those projected in the Interim Report of 9/17/1977 using 7/7/1977 projections.

APPENDIX IVA PROPOSAL TO PROMOTE MODERN COASTAL  
TRAWL FISHING IN THE UNITED STATES  
TWO - HUNDRED MILE ZONE OFF ALASKA

Program Objective: To demonstrate success in trawl fishing for bottomfish off Alaska to stimulate the flow of private capital into American coastal trawlers. A sub-objective is to demonstrate the current state of trawl fishing technology to Alaskan fishermen.

Program Activities: Five well-equipped trawlers with outstanding American skippers to fish for one year; two in the western Gulf of Alaska, three in the eastern Gulf and inside waters of Southeast Alaska. Vessels to deliver bottomfish to processors in region on contract basis. Scientific recording and observation conducted by observers from government. Five European trawler captains to serve as advisors on each vessel for two months.

Participants: Federal Government (NMFS), State Government (ADF&G), Private industry.

Management: Non-profit institute organized to run project; headed by manager loaned from industry and scientist loaned from NMFS or ADF&G.

Term: One year

Location: Eastern and western Gulf of Alaska

Program Components and Costs:	Gov't.	Industry
Equipment subsidy for trawlers -	\$1,200,000	\$1,200,000
Underwriting of gross stock guarantee -----	900,000	300,000
Program to bring skippers from Europe or eastern Canada -----	139,000	
General contingency -----	261,000	
Expenditures for fish -----		656,250
Total government contribution --	2,500,000	
Total industry contribution ----		2,156,000

Outcome: Markets and information (potential annual catch) for vessel owners for estimating return on capital investment in trawling capability. Management information for the North Pacific Fisheries Management Council.

Future Prospects: Similar demonstrations in other regions of Alaska such as the Bering Sea.

APPENDIX IV cont'd.

SOLAR ENERGY APPLICATIONS TEST AND DEMONSTRATION IN A FAR-NORTHERN REGION

Program Objective: To demonstrate the viability of solar hot water heating on a small commercial scale in a far-northern bush community and to stimulate the development of a solar industry within Alaska. Also to reduce the cost, and increase the supply, of energy - related services to rural Alaska and increase rural economic development potentials.

Program Activities: The design and construction of a modular shower and laundry facility using flat plate solar collectors on the University of Alaska Fairbanks campus for a test demonstration. Relocation of the facility to a rural village location for a field demonstration as a small commercial business providing employment and domestic hot water which is not presently available.

Participants: Institute of Water resources, School of Engineering, and Geophysical Institute - U of A Fairbanks, and the Tanana Chiefs Conference.

Management: Faculty and staff from the Institute of Water Resources, School of Engineering, and Geophysical Institute.

Term: Two years

Location: U of A Fairbanks campus; Dot Lake Village.

Project Components and Costs:	Total overhead, salaries, and benefits ---	\$76,641
	Equipment -----	15,900
	Transportation and travel -----	5,900
	Publication costs -----	1,500
	Computer time -----	500
		<u>TOTAL \$100,441</u>

Outcome: Demonstration of the technical and economic feasibility of applying solar technology in rural Alaska; familiarization of the construction industry and rural governments with solar technology and its applicability; publication of results in industry and scientific journals.

Future Prospects: Further applications of solar technology in far-northern regions.



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

January 19, 1978

Mem-

To: Rep. Terry Gardiner

From: Tom Singer *TS*

Re: An Example of the Financial Allocation Process of  
the Proposed Alaska Renewable Resources Corporation

#### Introduction:

This memo provides a detailed example of how the Alaska Renewable Resources Corporation (ARRC) could serve to rationally allocate Renewable Resources Development Fund monies. Taking a sample proposal relating to renewable resources development in Alaska, the memo describes the procedures established in the legislation for use by the ARRC in evaluating requests for funding. The evaluation process was designed to establish a systematic methodology for selecting those proposals which promise to best achieve the goals of the bill.

After a start-up period, the ARRC will begin operations by soliciting applications for funding. The applications will be received and requests for any further documentation will be made. When an application is complete, the Board's staff will perform the analysis outlined in this report.

#### The Proposal

The sample proposal outlined below represents one type of activity intended for funding by the ARRC (see Appendix I for full proposal).

A PROPOSAL TO PROMOTE MODERN  
COASTAL TRAWL FISHING IN THE UNITED  
STATES TWO - HUNDRED MILE ZONE OFF ALASKA

Program Objective: To demonstrate success in trawl fishing for bottomfish off Alaska to stimulate the flow of private capital into American coastal trawlers. A sub-objective is to demonstrate the current state of trawl fishing technology to Alaskan fishermen.

Program Activities: Five well-equipped trawlers with outstanding American skippers to fish for one year; two in the western Gulf of Alaska, three in the eastern gulf and inside waters of Southeast Alaska. Vessels to deliver bottomfish to processors in region on contract basis. Scientific recording and observation conducted by observers from government. Five European trawler captains to serve as advisors on each vessel for two months.

Participants: Federal Government (NMFS), State Government (ADF&G), private industry.

Management: Non-profit institute organized to run project; headed by manager loaned from industry and scientist loaned from MNFS or ADF&G.

Term: One Year

Location: Eastern and Western Gulf of Alaska

Program Components and Costs:

	Gov't	Industry
Equipment and subsidy for trawlers -	\$1,200,000	\$1,200,000
Underwriting of gross stock guarantee-----	900,000	300,000
Program to bring skippers from Europe or Eastern Canada-----	139,000	
General contingency -----	261,000	
Expenditures for fish-----		656,250
Total Government contribution-----	\$2,500,000	
Total Industry contribution-----		\$2,156,000

Outcome: Markets and information (potential annual catch) for vessel owners for estimating return on capital investment in trawling capability. Management information for the North Pacific Fisheries Management Council.

Future Prospects: Similar demonstrations in other regions of Alaska such as the Bering Sea.

### The Analysis

The guidelines for project evaluation by the ARRC are carefully enumerated in the bill. The following represents the type of evaluation the corporation would perform prior to a funding decision on the Bottomfish Proposal.

Step 1 - Eligibility - First, the ARRC must determine if the applicant is eligible for funding. Eligibility criteria are presented below:

Sec. 37.12.180. ELIGIBILITY FOR FINANCIAL ASSISTANCE - The Board may grant financial assistance if it finds that an applicant is qualified to receive assistance. An applicant is qualified if

- (1) he has submitted a proposal to the board in accordance with Sec. 170(a)(1) of this chapter;

For the purposes of this exercise, we assume the full proposal presented in Appendix I represents a complete application.

- (2) he is a resident of the state or, if the applicant is a partnership, corporation, or other association, it is owned by a majority who are residents of the state; and

Again, for the purposes of this exercise, we assume that the non-profit institute formed to implement the proposal constitutes a majority of Alaska residents (ADF&G and Alaskan fishermen and processors).

- (3) his projects which have previously received financial assistance from the corporation, if any, have complied with all requirements of that assistance and have performed with sufficient success or promise to warrant further aid.

The applicants have not previously received ARRC funding.

Once eligibility has been demonstrated, the staff will begin the actual analysis as follows:

Step 2 - Conformance with Purposes of the Corporation - The overall purposes of the ARRC are stated in Sec. 040 of the bill. Projects seeking ARRC funding must implement these purposes.

Sec.37.12.170. FINANCIAL ASSISTANCE (a) In providing financial assistance, the board shall

- (1) consider the proposals of qualified applicants only after the applicant has submitted a detailed proposal in the form prescribed by the board; no assistance may be approved by the board unless it finds, in writing, that
  - (A) the proposed project, if successful, will further the purposes of the corporation as set out in Sec.40 of this chapter;

Sec.37.12.040. PURPOSES. The purposes of the corporation are to:

- (1) Facilitate the rehabilitation, enhancement, and development of the state's renewable resources so as to foster a self-sustaining state economy;

The Bottomfish Proposal contains two objectives pertaining to this purpose:

- (1) To demonstrate success in trawl fishing, a development goal, and;
- (2) to generate scientific information for fisheries management, a rehabilitation and enhancement goal.

The overall objective of this proposal is to demonstrate the potential for the development of an Alaskan bottomfish industry. Such a demonstration would hopefully lead to self-sustaining economic activity based on an Alaskan renewable resource.

- (2) sponsor research and development of technologies and innovations for the rehabilitation and enhancement of the state's renewable resources to achieve their most appropriate use;

Scientific information gathered concerning catch potentials and the impact of trawl fishing technology on the resource would be valuable for the rehabilitation and enhancement of the bottom fishery.

- (3) identify new products, markets, and technologies for renewable resource industries in the state; stimulate the research and development of these

products, markets, and technologies; assist in the demonstration of their technical and economic feasibility; and assist in their introduction into commercial markets.

The main objective of the proposal is to demonstrate success in trawl fishing to Alaskan fishermen and to potential investors. This includes both demonstration of technologies unfamiliar to Alaskan fishermen and development of new products and markets utilizing bottom fish. A successful demonstration will hopefully assist in the expansion of commercial activity by attracting private capital into American coastal trawlers.

Step 3. - Conformance with Sub-Goals - The bill also directs the Board to pursue several more specific sub-goals. Again, a proposal must demonstrate that it addresses some or all of these sub-goals.

Sec. 37.12.160

- (1) seek to maintain the productivity of healthy renewable resources and expand the productivity of depleted or underutilized renewable resources;

The scientific recording and observation conducted by observers from government would provide data useful for the management of the various bottomfish species, including actual observation of the technologies involved and their impact both on the species harvested and on other resources.

- (3) promote the utilization of the state's renewable resources in the state and the development of import substitution and export markets;

Demonstration of catch potentials and contracts with processors in the region could facilitate the development of both in-state markets for bottomfish and export markets.

- (6) attempt to fund activities which will tend to maximize returns to the state and local governments and its citizens in such forms as tax revenues and resident employment and income.

An in-depth analysis would be required to determine the tax revenue, resident employment, and income potential of the operation of five trawlers for one year. Projections of future potential given a successful demonstration would also be required. The ARRC would work closely with such state agencies as the Department of Revenue and Department of Commerce & Economic Development in developing

these projections. Other potential returns, such as the growth of coastal communities, should also be identified and analyzed.

Sec.37.12.170

- (4) consider regional preferences and priorities in evaluating projects.

The Board must solicit comments and reactions from communities which would be impacted by the proposal. Local attitudes towards the proposed project must be weighed in all funding decisions.

Step 4 - Other Conditions for Financial Assistance - The bill imposes a number of specific conditions and requirements upon the board and the applicant.

Sec.37.12.170 (a) (1)

- (B) the application contains an adequate plan for project implementation, including, when applicable, a complete business, financial and marketing plan for commercial activities;

As the draft proposal contained in Appendix I was not prepared to meet the conditions of the bill, it does not fully meet this requirement. More detail concerning commitments between the trawlers and the processors would be required, as well as an analysis of the market for the processed fish.

- (C) private financing cannot reasonably be undertaken without aid or that financial participation is not otherwise available;

The applicant would be required to document the lack of availability of alternative funding sources.

- (D) The applicant has agreed that if new or newable resources industrial activity results from the proposed project, his best efforts will be employed to keep that activity in the state for a minimum period of time specified by the board;

While the Bottomfish Proposal is not designed to launch a specific commercial venture, the private sector participants clearly intend to develop a trawl fishery if the project demonstrates commercial potential. Therefore, the board would be required to extract some form of agreement between the private sector participants and the ARRC concerning the continuation of fishing and processing activity in Alaska if the project is successful.

- (E) The applicant demonstrates sufficient technical and business expertise to accomplish the objectives of the proposed project.

The board would be required to assess the ability of both the public and private sector participants to carry out the program activities presented in the proposal.

- (F) all costs associated with and ancillary to the project and future obligations generated by the project have been identified, including any necessary operating, maintenance, or other support costs for the life of the project;

Fairly detailed cost estimates appear in the proposal for direct project costs. However, further analysis would be required to identify other obligations which may result for the ARRC or other state agencies. These might include infrastructure requirements, future maintenance costs, or additional service burdens resulting from the project.

- (C) potential resource use conflicts that may result from the proposed project are identified and evaluated, and when necessary, plans to mitigate or resolve those conflicts and to preserve for the future options for the use of the state's renewable resources are included in the application;

The board must assess the probability and nature of resource use conflicts arising from implementation of the proposal, such as the impact of trawling technology or other fishing techniques (gear damage) or the disruption of actual resources such as shrimp or crab. The board would rely heavily on such state agencies as Environmental Conservation, Fish & Game and Natural Resources for both identification of potential resource conflicts and development of plans to avoid them. This critical part of the analysis is designed to avoid conflicts at the earliest stage of resource or business development, reducing the likelihood of damage to the resource base, or costly legal or regulatory battles in the future.

Sec.37.12.170 (a)

- (3) require, as a condition of a grant, the assignment by the applicant of rights to patents, copyrights, trademarks, royalties, or any other evidences of protection or exclusivity as to any products or technologies which the proceeds of the grant are used to develop;

Product or technological development is not a direct aim of the Bottomfish Proposal. Nevertheless, the proposal offers the board an opportunity to recoup its investment if the project results in any technological innovation with commercial potential. The board must condition its funding on assignment by the applicant to the ARRC of all rights to any commercial innovations, such as in trawling technology, which might be developed during the project year.

#### The Funding Decision

In its actual operations, the board would not have one but several applications under analysis at any given time. In making funding decisions, the board would meet periodically to consider a group of proposals and choose that mix of proposals which best implements the goals embodied in the legislation. The board would utilize project evaluations, such as the one outlined above, to assess how each proposal would implement the ARRC's long range operating plans and conform to their budget for the present fiscal year. Thus the Bottomfish Proposal would receive funding if the ARRC had identified the development of Alaska's Bottom Fishery as a priority investment area, if the evaluation showed the proposal to have merit, if the proposal compared favorably with other proposals related to bottom fish, and if the amount requested could be accommodated in the ARRC budget.

In its annual budget request, the ARRC must specify categorical areas for funding activity. These categories would encompass areas identified by the board as offering the greatest potential for implementing the bill in the upcoming year. If in the prior fiscal year the board had requested, and the Legislature had appropriated, an allocation for "bottomfish development," the board would be empowered to fund the Bottomfish Proposal. If there was not bottomfish category in the current budget but the proposal alerted the board to the opportunities in this area, the board could submit a "bottomfish development" category for the following fiscal year (without identifying any specific proposals). If the Legislature approved the category, the board could then fund the Bottomfish Proposal in the following year.

Due to the broad scope of their mission, the ARRC would need a great deal of flexibility to respond to the financing needs of each applicant. The bill states;

#### Sec.37.12.170 (a)

- (2) use the financial mechanism most appropriate to the conditions of the applicant and the proposed project and which will most effectively utilize the funds available; grants may be utilized when other mechanisms are not feasible and when the benefits from the project will accrue to the general public;

If the board decided to fund this proposal, it would in turn have to determine the most appropriate financing mechanism. The proposal seeks a grant; however, it offers at least two opportunities for generating a return in which the board could seek a share. First, the board could expect the processors to sell at a profit any bottom fish purchased from the trawlers. Second, as mentioned above, the proposal presents possibilities for innovation which could result in commercial activity (licensing technology, for example).

Given these potential returns, the board should structure its financing to secure a return to the corporation commensurate with the risk it assumes. However, because this return is highly uncertain, some form of conditional grant based on profit sharing might be most appropriate - this could take the form of a percentage share of the profits on processed fish sales and patent rights or royalties on commercialized innovations. The board would have to determine that the Bottomfish Proposal would benefit the general public before such a conditional grant could be made.

The ARRC's responsibility would not end with the funding of a project. It would be obligated to monitor funded projects for performance against the conditions made in the application. This would be achieved by the use of both quantitative and qualitative indicators of those factors identified in the analysis as critical to project success. For the Bottomfish Proposal indicators might include potential catch statistics generated, numbers of new trawlers or investment dollars entering the fishery, growth in the American share of the bottomfish market, or employment growth in trawling.

The ARRC will also be required to perform post-audits when a project is completed to identify if the project achieved its goals. This information, both monitoring of on-going projects and post-audits, would be included in the annual report of the ARRC and would expose the actual performance of the Corporation to the Governor, the Legislature, and the interested public.

November 14, 1977

APPENDIX I

D R A F T   F O R   D I S C U S S I O N

A Proposal to Promote  
Modern Coastal Trawl Fishing in the  
United States 200-Mile Zone Off Alaska

"A national program for the development of fisheries which are underutilized or not utilized by United States fishermen, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(Section 2(a)7 of the Fishery Conservation and Management Act of 1976).

PROPOSAL TO PROMOTE MODERN COASTAL  
TRAWL FISHING IN THE UNITED STATES  
TWO-HUNDRED MILE ZONE OFF ALASKA

Objective of Program:

The objective is to demonstrate success in trawl fishing for bottomfish off Alaska to stimulate the flow of private capital into American flag coastal trawlers engineered and managed so that they will be economically successful while fishing in the 200-mile zone along the coast of Alaska. A secondary objective is to demonstrate the current state of trawl fishing technology to Alaskan fishermen.

The Trawl-Fish Resources of Alaska and Extent of American Utilization:

The term "trawl-fish" refers to species including pollock, cod, flounder, Pacific ocean perch, and other species usually caught in trawl nets. The great bulk of these fish have white non-oily flesh which lends itself to freezing. These fish also tend to be more abundant and of lower unit value than species such as salmon and crab. For these reasons, trawl fish are the foundation of the frozen seafood industry of the world.

The American public consumes more than 650 million pounds annually of frozen and fresh trawl fish fillets and minced flesh. More than 90% of the supply of these products is imported. Together with heavy imports of shrimp, lobster tails, and tuna, these imports of trawl fish products create the unfavorable U.S. trade balance on account of seafood which reached as high as 1.8 billion dollars in 1976. In addition, the U.S. imports of fish meal and solubles in recent years have run at a level near 150,000 short tons or about 37% of present U.S. annual consumption of such products.

The trawl fish resources of Alaska, if utilized by United States citizens to the full extent allowed by U.S. management plans, would produce annually about 1.3 billion pounds of fillets and minced fish muscle and

about 207,000 short tons of fish meal and solubles or other dry weight of concentrated fish protein. Such production would make the United States a large net exporter of trawl-fish products and, in all likelihood, would eliminate U.S. import of fish meal. The increased U.S. production would be distributed: (1) partly in the United States market in replacement of imports and as contributions to growth of consumption, and (2) partly in overseas markets.

For example, the muscle flesh of domestic Alaska pollock, when properly handled, closely resembles that of cod. It can be substituted for cod in many uses and also can be substituted for pollock and hake flesh now imported. Aggregate imports of fillet products from these species total over 400 million pounds annually. It wouldn't be surprising if American pollock flesh products in the future were divided, say, 200 million pounds to the U.S. domestic market annually and 620 million pounds annually to overseas markets; the principal one of which would be Japan. The latter country consumes several times this amount of pollock flesh as a component of fabricated fish products such as surimi and kamaboko.

The degree of utilization of Alaska trawl fish resources by Americans today is low. Foreign fishing and processing has accounted for practically all production up to now. In 1978, the total catch allowed under approved management plans for the eastern Bering Sea and the Gulf of Alaska will be 1,708,700 metric tons or more than 3.7 billion pounds round weight. Of this total, only 3.5% is projected for catch and processing by Americans, and even this modest harvest may be unattainable without technical assistance such as proposed here. In other words, plans for 1978 indicate that the vessels of other nations will catch 96.5% of the allowable catch of trawl fish in Alaskan waters.

Fish Harvesting and Processing Facilities of Alaska

Alaska, in 1975, had 221 processing plants employing 9,947 people in summer. In winter, employment has been considerably less, probably half of the foregoing. Trawl fish processing, of course, will tend to even out employment because it is a twelve-month activity.

Of these plants, two, each owned by a separate company, have installed mechanical fish filleting and skinning lines along with necessary freezing facilities to process trawl fish. A third plant is planned for sometime in 1978. It will be owned by one of the first two companies in the business. Two other seafood companies have indicated their intentions of investing in trawl fish processing facilities within the next two years. In other words, within the next two years, Alaska is likely to have at least five plants for the processing of trawl fish. All five plants will be on the Gulf of Alaska. Longer range plans call for utilization of fish in the Bering Sea and plants easily reached by vessels fishing there. Dutch Harbor and the Island of St. Paul in the Pribilofs are being considered as sites for such plants.

According to the Commerce Department's "Fisheries of the United States, 1975", there were 12,679 full-time fishermen in Alaska and 9,181 part-time fishermen; 21,860 in all. This latter total is greater than the corresponding figure for any other state. The next ranking state in number of fishermen is Maine with 17,316.

The great majority of the Alaskan fishermen are using small vessels, i.e., less than 60 feet in overall length. Very few vessels today are equipped for trawling, i.e., probably only about 100 in all of Alaska. These boats trawl mainly for shrimp. Most of the shrimp trawlers are less than 80 feet in overall length and the upper limit of horse power is around 580.

The largest and most powerful vessels fishing in Alaska are engaged in the king and snow crab fisheries, principally in the eastern Bering Sea. The crab fleet today includes about 90 modern vessels. Many of these are between 100 and 200 gross tons and between 85 and 120 feet in overall length. In addition, about 32 new crab vessels are under construction. When these have been added to the fleet, the United States will have approximately 120 crab vessels in the N. Pacific capable of fishing in the open sea all year around. Most of these vessels will have a horse power of 800 or more. More than half of the Bering Sea crab fleet comes from home ports in Washington and Oregon. A little less than half of the modern crab boats are based in Alaska.

In all likelihood, the present crab fleet, including the new boats being built, will be able to harvest all of the crab within the American 200-mile zone. Whether or not there will be a surplus of crab boats available to enter the trawl fishery in the next few years will depend on increased markets for snow crab.

If we are to get a year-round fish trawling effort started on a substantial scale within the next year, a few vessels will have to be enticed to leave crab fishing. If the trawl fisheries appear promising, the owners of some of the crab vessels may convert to trawling. It is likely some of the shrimpers will trawl for fish in the periods between shrimp seasons. A few of the shrimp trawlers might convert to full-time fish trawling but, because of size limitation, not many shrimpers will be able to trawl for fish all year round. Also, a favorable outlook will induce some of the vessel owners to order construction of some new vessels designed specifically for trawling. The main part of the future trawl fleet will come from new construction. This project can establish important criteria for the design of the new generation of vessels.

The Problem of Recruiting Vessels for Fish Trawling and the Need for  
a Demonstration

Vessel owners have experienced favorable financial results from crab fishing and, as a result, capital still is flowing into American crab vessels. According to studies of the Commerce Department, return on investment in crab fishing often has been at 15% or greater. Americans have had virtually no experience in commercial trawling for fish in Alaska. Consequently, vessel owners have no adequate basis for estimating catch over a complete annual cycle.

Each of the species of trawl fish under consideration goes through an annual cycle of behavior and migration. For example, in winter, most species move offshore into deeper water as ocean bottom temperatures decline. In late winter, or in spring, there is a spawning period. Each population of a species will move to a "spawning ground" usually in a heavy concentration. After spawning, there is a period of feeding and recovery and usually a greater dispersal over the continental shelf. When bottom waters cool again in autumn, the fish populations will migrate again into deeper water. Some species winter over the shelf edge on the continental slope and others are on the outer part of the shelf.

Considering these fish movements, it is apparent that one must fish an entire year in order to get a reliable reading on what a trawler can produce.

The National Marine Fisheries Service and the Halibut Commission, over the years since World War II, have chartered trawlers from time to time to survey the bottom fish resources of the continental shelf and slope off Alaska. These surveys have been very useful. They have indicated which species are present by geographical area and have enabled the NMFS

to make stock assessments. These surveys together with data from foreign fleets made the present array of American Fishery Management plans possible. These surveys by the NMFS in the past five years have indicated substantial resources of pollock, cod and flounder in the Gulf of Alaska. This information has encouraged American processors to invest in facilities to process these species.

A few vessel owners have also made investments toward harvest of trawl fish. In general, these actions have been to invest in vessel capability that would lend itself to conversion to trawling--multipurpose design, adequate horsepower, deck arrangements, etc. The additional conversion costs for these vessels runs \$300-500,000, however, and very few owners have chosen to make this additional investment because of foreign competition for the resource, lack of management authority to conserve the resource, proven alternatives (an expanding crab fishery), lack of markets (processor commitment), and lack of information on sustained return to capital (demonstration fishing).

With passage of the Fisheries Conservation and Management Act of 1976 (the "200-mile limit" bill), this situation has changed. The U.S. now has the capability to manage these resources and the requirement that U.S. fishing vessels receive full allocation before foreign fishing is permitted provides a sound basis for investment of both private and public monies.

In order to stimulate the flow of private capital into American Flag trawlers, we will have to provide the vessel owners with markets and the information they need to estimate return on capital. The major unknown in the return on capital calculation is the amount of annual catch.

We submit that the most effective way to generate this information is to arrange a trawl fishing demonstration over a one-year period. During this period, the best and most experienced American skippers should

be employed. The vessels should be capable of fishing all year. They must have the fish detection and trawl monitoring instrumentation which will put them in a competitive parity with coastal trawlers of other advanced nations.

This fishing demonstration should be the occasion for our bringing ourselves completely up-to-date on all aspects of trawl fishing technology, i.e., the design of vessels, the fishing hardware and nets, the electronics and the techniques of utilizing all of these elements to optimize catch.

#### Fishing Demonstration Proposal

To demonstrate the return to capital, it is proposed that two well-equipped trawlers with outstanding skippers be engaged to fish for a year in the western Gulf of Alaska and that three equally well-equipped and skippered trawlers be engaged to fish for a year in the eastern Gulf of Alaska. For the purpose of this project, a line drawn down the middle of "Seward Gulley" will divide the western Gulf from the eastern.

It is recommended that two of the trawlers in the eastern Gulf of Alaska, which includes southeastern Alaska, be of the smaller size class now engaged in trawling in that region, i.e., from 58 to 85 feet in overall length. The remaining 3 vessels should be in the 100-120 foot LOA class.

The two trawlers in the western Gulf of Alaska could deliver their catches to the plants at Kodiak, and the other plants which will be starting up elsewhere west of Kodiak.

The three trawlers (one large and two smaller) in the eastern Gulf of Alaska would have the territory from the middle of the Seward Gully to the Canadian boundary in Dixon Entrance. It is contemplated that the two smaller vessels would deliver fish mainly to plants in the inside waters of southeastern Alaska; i.e., the one at Petersburg and others which may be able to buy bottom fish.

In winter weather, the two smaller vessels would have to concentrate their effort in the inside waters of southeastern Alaska. In the better weather, the two smaller vessels should fish outside or inside, wherever they could maximize dollars of gross stock.

The larger vessel could fish outside or inside waters, wherever it could maximize dollars of gross stocks.

Deliveries of the three vessels allocated to the eastern Gulf of Alaska could be spread among plants from Seward to Ketchikan.

It is suggested that in each part of the Gulf of Alaska, the various interested companies be asked to commit for definite shares of the catch. If several companies in each region were interested, it would be possible to take into account the seasonal activities of plants in allocating catches. For example, if it appeared the plants in Southeastern during July were going to be plugged with salmon to be frozen, the large trawler and maybe one or both of the others could deliver to Seward or Cordova.

The vessels in this demonstration should be available to observers from the NMFS, Alaska Fish and Game Department, and observers from private industry. Complete fishing logs should be kept and made available to the public. It would appear desirable for the National Marine Fisheries Service to prepare and publish a summary report on the results of the project after the year of fishing, and also quarterly progress reports.

The results should be of value to American citizens who are attempting to project results of trawl fishing, specify and design future trawlers, or to plan the modification of existing vessels.

#### Management

The demonstration program will be managed by a non-profit institute organized for the purpose under the laws of Alaska. A manager, preferably

an executive "loaned from industry", will administer the program, manage industry commitments, supervise the fishing activities, and allocate the catch among processing industry participants.

The manager will be assisted by a government scientist, preferably loaned from NMFS or ADF&G, who will be responsible for the catch sampling, resource aspects, and documentation of the venture for the public record. Clerical and financial assistance will be provided by an office manager and/or through contracts.

#### A. Importance of Skippers

The most important decisions in setting up the demonstration are the selections of skippers. If a skipper is particularly effective, it sometimes is wise to select that man and the boat which comes with him even though the boat may not meet every one of the specifications which one might consider as being highly desirable. The skippers selected must have demonstrated experience and capability in trawling and have enthusiasm for this method of fishing.

With the qualifications that one should put first priority upon the capabilities of the American captains, let us consider recommended vessel specifications.

#### Recommended Specifications for the Two Larger Vessels in the Western Gulf of Alaska and One Larger Vessel in the Eastern Gulf of Alaska

1. Built to standards of design and construction characteristic of the more modern trawlers and crabbers operating in the winter weather of the North Pacific.
2. Horse power of main engine, no less than 700, or no less than 600 horse power with Kort nozzle on propeller.

3. Overall length - greater than 85 feet--preferably 100-120 feet.
4. Equipped to handle efficiently both bottom and mid-water trawls.
5. Length of each trawl warp - 1,000 fathoms.
6. Two Baader or Jutland fish gutters aboard with combined capacity to gut 60 fish per minute.
7. Navigational Equipment
  - a. Compass
  - b. Radar with range in excess of 30 miles (2 each)
  - c. Loran-C (2 each)
  - d. Track plotter, coupled to Loran C to automatically record track of each tow or each run for purpose of positive location/future identification.
8. Depth Sounding Equipment
  - a. Recording fathometer with range in excess of 900 fathoms, with scale expander, white line and bottom-lok.
  - b. Echo scope to aid in judging characteristics of fish shown by fathometer.
9. Scanning Sonar
  - a. Rotation  $360^{\circ}$ , tilt  $0^{\circ}$  to  $90^{\circ}$
  - b. Range in excess of 1,600 meters
  - c. Scope, paper, and audio display of fish and other objects picked up by the sonar
10. Trawl Monitoring System
  - a. Upward and downward looking transducers for trawl headrope
  - b. Temperature indicator on headrope transducer
  - c. Cable -- 1,000 fathoms from transducer and temperature indicator on trawl to net sonde winch utilizing constant tension specified by manufacturer of net sonde.

- d. Trawl watch, with alarm system, coupled to fathometer specified above

C. Recommended Specifications for Two Smaller Vessels in Eastern Gulf of Alaska

1. Overall length 55 to 85 feet inclusive.
2. Horse power of main engine no less than 300.
3. No specifications or standards of design and construction.
4. Same as for larger vessels.
5. Length of each trawl warp, 750 fathoms.
6. At least one Baader or Jutland fish gutter aboard.
7. Same as for larger vessels.
8. Same as for larger vessels, except that range of fathometer should be no less than 450 fathoms.
9. Same as for larger vessels, except that range of sonar should be no less than 1,600 meters.
10. Trawl monitoring system must have same basic elements as the one used on the larger vessel. A single transducer on the headrope of the trawl looking downward, will suffice and the length of the cable to the constant tension winch on the deck of the vessel need be about 750 fathoms.

D. Recommended Assistance to Trawler Owners

Trawlers meeting the above specifications will be competitive with the best vessels of their size and power anywhere in the world. Until we know more about what can be produced by such vessels in the 200-mile zone of Alaska, vessel owners, unless they have some special aid, will not have any tangible justification for meeting these specifications and dedicating a year to fish trawling.

It is proposed that the special aid for the five trawlers in the fishing demonstration take the following three forms:

1. A grant or cash subsidy of 50% of the installed cost of new equipment needed by a vessel in order to comply with the specifications listed above.
2. For each vessel, there will be a guarantee of average gross stock per day at sea fishing, over each group of six voyages, of \$2,500 (\$1,500 for smaller trawlers) plus a cash bonus based on catch.
3. A program to bring from Europe to Alaska, five outstanding English-speaking trawler captains experienced in the use of the fish finding and trawl monitoring systems specified, as well as in the operation and maintenance of mid-water and bottom trawls, and to put one of these men aboard each demonstration trawler as an advisor and coach. It is suggested such advisor and coach be aboard each trawler for the first 60 days of the demonstration. Then for the remainder of the twelve-month fishing demonstration period, one captain-advisor should be available to the fleet. It would appear appropriate for such an advisor to rotate among the five trawlers.

E. Details of Each Form of Assistance

1. Cash Subsidy on Equipment Purchases

a. Estimated equipment costs:

Most of the modern vessels in the Alaskan fisheries already have an adequate Loran, radar, and depth sounder. The major categories of equipment most of them do not have and would be required to purchase in order to trawl for fish are listed below:

D R A F T

<u>Depth Sounding</u>	<u>Large Trawler</u>	<u>Small Trawler</u>
1) Echo scope for use in conjunction with sounder:	\$4,100	\$ none
<u>Scanning Sonar and Scope</u>	46,000	24,000
<u>Trawl monitoring system</u>	34,000	25,000
<u>Course plotter</u>	5,500	5,500
<u>Installation cost of above categories:</u>	20,000	14,000
<u>Trawl winches and installation</u>	102,000	65,000
<u>Gallows, blocks, deck rearrangements</u>	15,000	10,000
<u>Trawl warp:</u>		
1) 2,000 fathoms 3/4" steel cable	10,000	
2) 1,100 fathoms 9/16" steel cable		5,000
<u>Two hydraulic net reels:</u>	28,000	22,000
<u>Two pairs bottom trawl doors:</u>		
1) Polyvalent	14,000	
2) Steel-V		4,000
<u>One pair Suberkrub mid-water trawl doors:</u>	4,000	2,000
<u>Nets with associated gear and spare webbing:</u>	35,000	20,000
<u>Mechanical fish gutters, fish conveyors, and wash boxes:</u>	<u>41,000</u>	<u>20,500</u>
Subtotal	\$358,600	\$217,000

If vessel is a live-tanked crabber, it  
may be desirable to take one or all of  
the following courses of action:

Insulate tanks:	50,000	30,000
-----------------	--------	--------

and

Install flush hatches, stancheons  
and bin boards:

\$20,000

or

D R A F T

Purchase full supply of plastic fish boxes:

\$20,000

or

Install RSW system:

\$70,000

For budgeting purposes:

RSW cost:	\$70,000	\$20,000
<u>If vessel's hydraulic system does not have enough capacity for operation of trawl winches, it will be necessary to beef it up which could cost:</u>	15,000	10,000
<u>If vessel does not have Kort nozzle on propeller it can realize at least a 20% increase in bollard pull by installation of a fixed nozzle around the propeller:</u>	<u>17,000</u>	<u>15,000</u>
Subtotal:	<u>\$152,000</u>	<u>\$75,000</u>
Contingency:	<u>39,400</u>	<u>28,000</u>
Grandtotal if all of above items are purchased:	<u><u>\$550,000</u></u>	<u><u>\$320,000</u></u>

For budgeting purposes, it is suggested that one assume each of the larger will need \$550,000, and the smaller vessels \$320,000. The total equipment expenditure of the five vessels could be as high as \$2,290,000. Fifty percent of this would be \$1,145,000. It is recommended the fund for equipment subsidy be \$1,200,000.

There are some vessels in the North Pacific which already have most of the features costed above. If they can be recruited for the program, the actual expenditure on equipment subsidy can be held below the above figure.

2. Guaranty of average gross stock per day at sea.

a. Proposed terms of guaranty

1. Amount, \$2,500 per day at sea for the larger vessels

and \$1,500 per day at sea for the smaller. Exclude any breakdown of vessel for more than whole day.

2. Set definite starting date and ending date for 12-month period during which guaranty is effective for up to 250 days.
3. Main source of cash for vessel operations will be the fish processing industry in its purchase of fish from the vessels at the prevailing prices. These prices will be related to the wholesale prices of fillets in the lower 48. Today the prices for round fish would be approximately as follows: .6½ cents per lb. round wt. for pollock; average of .10 cents per lb. for flatfish; and .12-.15 cents per lb. for gutted cod. All seafood companies should be invited to participate in program. It is suggested that if a processing company wishes to purchase fish from these trawlers, it should make a commitment at the outset to take a certain percentage of the catch and at the same time agree to underwrite that percentage of the industry's share of the guaranty.
4. Guaranty will be funded 75% by money from public sources and 25% by money from industry and will apply only to a short fall in average daily gross stock.
5. For purposes of calculating average daily gross stock, the total receipts of the vessel for each six consecutive voyages will be divided by the total number of days at sea in the six voyages less any days during which the vessel was broken down and unable to fish for a whole 24-hour period.
6. After each six voyages, there will be a settlement with the vessel in regard to any amounts owed to it by reason of a shortfall in gross stock, or by reason of earning the bonus for realizing a gross stock from the sale of fish in excess of \$2,500 a day at sea. (\$1,500 for smaller vessel). The amount owed the vessel will be paid in cash within 2 weeks of termination of last voyage in the group of 6.
7. Either the vessel or the administering agency should have the right to terminate the arrangement at 30 days notice in writing provided, however, in the event the vessel terminates at its initiative, it will refund a share of the equipment subsidy equal to the ratio of days remaining after the termination date, in the year's contract period, to the total number of days in the contract period. If the arrangement is terminated at the option of the administering agency, at any time in the first 6 months, it will pay the vessel \$100,000. (\$60,000 for smaller trawler). If the termination occurs in the third quarter, the payment to the vessel will be \$50,000. (\$30,000 for smaller vessel). If the termination occurs

in the fourth quarter, but prior to the end of the full year, the payment will be \$12,500. (\$7,500 for smaller vessels).

8. As indicated above, it is proposed that the NMFS be the administering agency to contract with the vessels and administer the contracts.
9. The contract with a vessel should name the skipper and should provide that there should be no substitution without the approval of the administering agency. If, for reasons of health or otherwise, it is desirable for a skipper to be relieved temporarily or for a longer period, the administering agency should not unreasonably withhold approval.
10. The contract with a vessel should require a minimum number of personnel aboard. The purpose will be to ensure enough personnel to allow the vessel to reach her maximum catch potential. On each of the larger trawlers, it is suggested the minimum number of personnel be 6. On the smaller trawler, it is suggested the minimum number be 4.
11. Participating processing companies must pledge their best efforts to buy all of the fish the trawlers can catch. The intent is to have the boats produce and sell at the prevailing market prices every pound of marketable fish which can be caught. The fish processing companies will not be expected to buy unmarketable species.

### 3. Funding of Gross Stock Guaranty

- a. Assuming each of the five vessels spent 250 days at sea and caught no fish, the theoretical liability on account of the gross stock guaranty would be \$2,625,000.

As a practical matter, it never will be that high because: (1) each vessel will catch some fish; and (2) the administering agency can terminate the engagement of a vessel at 30 days notice if results are too poor.

- b. Some practical possibilities:

- (1) Shortfall of 50% in all 5 vessels for 5 months and then a termination of all 4 vessels after 30 days notice would cost: \$1,076,250.
- (2) A 25% shortfall in all four vessels for a year would cost: \$656,250.
- (3) A 50% shortfall in all five vessels for 6 months and a 50% gross stock surplus for the other 6 months would cost the following: shortfall for 6 months with 5 vessels, \$656,250; cost of bonus to five vessels with 50% surplus for 6 months, \$131,250.

Total: \$787,500

c.	Recommended fund to backup guaranty of gross stock is \$1,200,000. From other than industry 75% or \$900,000.	
4.	Program to bring to Alaska five outstanding trawler captains from Europe.	
a.	Estimated cost: Fee of \$200/day per man x 60 days x 5 men =	\$60,000
b.	Meals and other expenses: \$30/day x 60 days x 5 men =	\$ 9,000
c.	Five round-trip airplane fares Europe-Alaska, \$2,000 each x 5 men =	\$10,000
d.	Fees and expense of skipper for balance of year, \$200/day x 300 =	<u>\$60,000</u>
	Total	<u>\$139,000</u>
	Recommended funding =	<u>\$139,000</u>

Recap of required funding from sources other than fish industry:

1.	Equipment subsidy:	\$1,200,000
2.	Underwriting of gross stock guaranty:	900,000
3.	Program to bring skippers from Europe or Eastern Canada:	<u>139,000</u>
	Total of above:	\$2,239,000
	Add general contingency:	<u>261,000</u>
	Estimated total funding requirements from sources other than fish industry:	<u>\$2,500,000</u>

Recap of Fish Industry Contributions:

1.	Other half of equipment expenditure:	\$1,200,000
2.	25% of gross stock guaranty:	300,000
3.	Expenditures for fish at prevailing market prices. Assume 50% of guaranteed gross stock for 6 months:	<u>656,250</u>
	Total of funds from industry under assumptions stated:	<u>\$2,156,250</u>

Estimate of Results of Project:

We believe the execution of the foregoing program will attract a limited but very significant number of existing qualified vessels into the trawl fisheries on a full-time basis. We believe the program will give the American trawling industry a needed beachhead.

The program will have a very great impact upon the design, financing, and construction of new trawlers for the North Pacific.

Extended fishery jurisdiction around the world has disrupted the previous pattern of fish production and the flow of products among nations.

This demonstration fishing project with American trawlers will enable the United States to move vigorously to utilize the resources under its jurisdiction, to increase its supply to its domestic market, and to take advantage of export opportunities.

The above is in accord with the Fishery Conservation and Management Act finding (Section 2 (a) 7):

A national program for the development of fisheries which are underutilized or not utilized by United States fishermen, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

Possible Continuation Beyond First Year

The foregoing program and its funding was designed around the concept of continuous fishing efforts by five vessels throughout one year.

The first year will close with a major addition to our country's knowledge of the economic potential of its Alaskan fisheries, as far as American citizens are concerned. There will be a substantial investment of public monies in the vessels and in know how. In all likelihood, construction of some new American trawlers will be underway in shipyards.

There still will be much to be done in measuring economic potential. There will be a need for further testing of many areas in the Gulf of Alaska and there will be the Bering Sea as a whole new frontier as far as American commercial trawling is concerned.

The experience of Americans in commercial trawl fishing with modern equipment and good record keeping, will be useful to the work of the North Pacific Fisheries Management Council in many ways, including the drafting of regulations to safeguard endangered species while facilitating the harvest of abundant species by Americans.

Toward the close of the first year, it would appear sensible for a review to be made of how the United States can derive maximum benefit from its investment in people, know-how, and fishing equipment. At such time, with the benefit of the experience gained, an appropriate program for a second year might be drawn up.

BREAKDOWN of the RENEWABLE RESOURCES DEVELOPMENT FUND MONIES  
1979 - 1989

Under the Proposed Alaska Renewable Resources Corp.

(figures in millions of dollars)

Fiscal Year	Annual RRDF Income	50% To RREF (balance)	50% Available for Annual Expenditure	RRPF Earnings <sup>3</sup> 7% average	Total Avail for annual expenditure
FY '79 <sup>1</sup>	\$16.7	\$8.35	\$8.35	\$0.	\$8.35
FY '80	19.4	18.05	9.70	.58	10.28
FY '81	19.8	27.95	9.90	1.26	11.16
FY '82	20.1	38.00	10.05	1.95	12.00
FY '83	20.8	48.40	10.40	2.66	13.06
FY '84	21.3	59.05	10.65	3.38	14.03
FY '85	21.8	69.95	10.90	4.13	15.03
FY '86 <sup>2</sup>	23.8	81.85	11.90	4.89	16.79
FY '87	25.5	94.60	12.75	5.72	18.47
FY '88	23.8	106.50	11.90	6.62	18.52
FY '89	21.1	117.05	10.55	7.45	18.00

Breakdown/ Renewable Resources Development Fund Monies  
cont.

1. Estimates for FY'79 through FY'85 are taken from November 17, 1977 memo from Dick Haggart to Re. Clark Gruening, "State Revenue Outlook through 1985," Case I (Low Income, High Expenditure Model).
2. Estimates for FY'86 through FY'89 are derived from December 5, 1977 memo from Milt Barker to Senator George Hohman, "Projected Permanent Fund Balances." Barker's assumptions have been revised to conform to those used in the Haggert memo (principly gas production estimates).
3. Earnings are also anticipated from ARRC investments from the 50% available for expenditures. Because these will be venture capital-type investments, the nature, amounts, and timing of these returns are impossible to estimate. Repayment mechanism will be tailored to the needs of venture being financed, and may include liscence or royalty income, deferred repayments or joint venture equity greements, all of which involve high risk and uncertain returns. Nevertheless, successful venture investments yield substantial returns, which will augment the total available for expenditure by the Corporation.

Greening

Senate Bill 342

"An Act creating the resource recovery revolving loan fund; and providing an effective date."

AS 45 is amended by adding a new chapter to read: Chap 97 RES REC REV LOAN FUND  
Section 1. PURPOSE. The legislature finds that state government must:

- SEC 45.97.010 (1) assert leadership in developing small scale technologies appropriate to an era of limited resources;  
(2) encourage the recovery of waste of energy and other resources from discarded materials throughout the state.

(3)

Sec. 45.97.020 ~~POWERS OF THE DEPARTMENT~~ FUND ESTABLISHED. There is established in the Dept. of Commerce and Economic Development the resource recovery revolving loan fund to finance, develop, and implement less costly and less energy-intensive technologies of recycling, waste disposal, transportation, agriculture, energy and building design appropriate to the Alaskan environment and construction, capital improvement or operational expenses of a resource recovery facility.

Sec. 45.97.030 POWERS OF THE DEPARTMENT. The commissioner of commerce and economic development may

- (1) designate agents and delegate his powers to them as necessary;
- (2) adopt regulations necessary to carry out his duties under this chapter;
- (3) make loans to qualified borrowers as described in sec. 60 of this chapter.

Sec. 45.97.030 LIMITATION OF LOANS, (A) loan under this chapter may be made up to but not exceed \$50,000.

(b) The duration for repayment of the loan may not exceed 20 years.

(c) ~~Loans under this~~ The rate of interest may not exceed eight per cent on the unpaid balance.

(d) Loans made under this chapter may be used to finance no more than  
(1) 80 percent of the cost of development and implementation of transportation, agriculture, energy and building design appropriate to the Alaskan environment;  
(2) 90 per cent of the cost of construction, capital improvement, and operational expenses of a recycling, waste disposal or resource recovery facility.

(e) Money loaned shall be delivered to the borrower in the form of a warrant drawn on the treasury, vouchered in the manner prescribed for state disbursing officers, and charged against the resource recovery revolving loan fund. Each voucher shall be approved by the commissioner or a bonded deputy authorized to act as a certifying officer. Upon repayment of loans by instalments, or otherwise, in accordance with the prescribed terms, or upon liquidation by foreclosure or other process, or upon receipt of interest or other revenue, the money so received shall be turned over to the commissioner of revenue for deposit in the resource recovery revolving loan fund.

Sec. 45.97.040. POWER OF COMMISSIONER TO ASSIGN AND SELL MORTGAGES.

The commissioner may assign and sell or transfer at par value or at a premium or discount loan mortgages executed under this chapter to the Dept. of Revenue or any bank or other private purchaser in consideration of receiving cash, bonds, debentures and notes in return as security for loans granted under this chapter, and upon conditions he considers advantageous to the state resource recovery program.

Sec. 45.97.050. CREATION OF FUND. There is created the resource recovery revolving loan fund to carry out the purposes of this chapter. This fund shall be used for no other purpose.

Sec. 45.97.060. ELIGIBILITY FOR LOANS. A person, educational institution, nonprofit association, business concern or municipality is eligible for a loan under this chapter.

Sec. 45.97.070. DEFINITIONS. In this chapter

- (1) "commissioner" means the commissioner of the Dept. of Commerce and Economic Development;
- (2) "department" means the Department of Commerce and Economic Development;
- (3) "resource recovery facility" means a concern that engages in the business of beverage container collection, recycling or other organized effort to recover waste energy and other resources from discarded materials.

Sec. 2. This Act takes effect July 1, 1978.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

# HOUSE JOURNAL

## ALASKA STATE LEGISLATURE TENTH LEGISLATURE · SECOND SESSION

---

JUNEAU, ALASKA

Wednesday

April 12, 1978

---

### Ninety-fourth Day

Pursuant to adjournment, the House was called to order by Speaker Malone at 10 07 a.m.

Roll call showed all members present except Representatives Beirne, Brown, McKinnon and Miles. Representative Beirne had been previously excused from a call of the House today.

Mr. Miller moved and asked unanimous consent that the other absent members be excused on official state business. There being no objection, it was so ordered.

The prayer was offered by the Chaplain, Pastor Muriel C. Brown of the Chapel by the Lake. Mr. Swanson moved and asked unanimous consent that the prayer be spread on the journal. There being no objection, it was so ordered and the prayer appears as follows.

"Save this moment, O Lord, from being merely a gesture to custom or convention.

But even as we pray for Your guidance and help, O God, we know that You do not intend prayer to be a substitute for work. We know that we are expected to do our part, for You have made us, not puppets, but persons with minds to think and wills to resolve.

Make us willing to think, and think hard, clearly and honestly, guided by Your voice within us.

Through Jesus Christ, our Lord. Amen."

Mr. Miller moved and asked unanimous consent that the journal for the 93rd day and House/Senate Supplements 6 and 7 be approved as certified. There being no objection, it was so ordered.

MESSAGES FROM THE GOVERNOR

"April 12, 1978

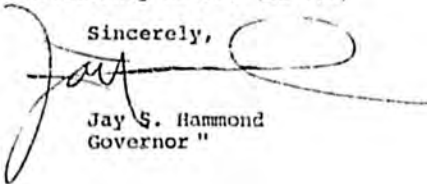
The Honorable Hugh Malone  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker: *HM*

The following list comprises those priority measures introduced by this administration which realistically could and should be addressed this session. While other measures, such as certain park measures, are deemed priority, awareness of political reality (evidenced by the fact that these issues have long been before legislators) makes them inappropriate for inclusion upon this list.

1. Land Package (HB 904, HB 905, SB 568, SB 241)
2. Alpetco and Tesoro Contracts (HCR 112, SCR 85, HCR 113, SCR 84)
3. Permanent Fund (HB 298 or HB 596)
4. Hootch Case Education Bonds (SB 447)
5. Alcohol Tax and Package (HB 196, SB 167, HB 232, SB 182, HB 240, SB 183, HB 241, SB 168)
6. Agriculture Package (HB 910, SB 435, SB 413, SB 414)
7. Supplemental and Special Appropriation Bills
8. Correctional Facilities Bonds (HB 890)
9. School Construction Bill (HB 853, SB 163)
10. Forest Practices Bill (SS SB 59)
11. Reservation of Water (HB 176)
12. Bilingual Education (HB 851)
13. Longevity Bonus COLA (SB 392)
14. Instructional Unit Increase Education (HB 800)
15. Oil and Gas Income Tax (HB 322)
16. Unemployment Insurance Bill Increase (SS HB 550)
17. Administration of Fish and Game (SB 147)
18. Senior Citizen Rent Equivalency (HB 584)
19. Management and Efficiency Review (SB 100)

Sincerely,

  
Jay S. Hammond  
Governor "

A message dated April 12, 1978 was read stating the Governor has signed the following bills and is transmitting the enrolled and engrossed copies to the Lieutenant Governor's office for permanent filing:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR FCCS  
 HOUSE BILL NO 611 HB  
 (making supplemental appropriations to the Office 611  
 of the Governor, telecommunications the legis-  
 lative finance division, the Department of Com-  
 merce and Economic Development, division of  
 business loans; the Legislative Affairs Agency;  
 and the Alaska State Council on the Arts; and  
 providing for an effective date."  
 Chapter 25, SLA 1978

HOUSE BILL NO 911 HB  
 (making a supplemental appropriation to the 911  
 Legislative Affairs Agency; and providing for  
 an effective date.)  
 Chapter 26, SLA 1978

MESSAGES FROM THE SENATE

A message dated April 11, 1978 was read stating the Senate HB  
 has passed HOUSE BILL NO. 619 (supplemental appropriation 619  
 to Department of Labor, vocational rehabilitation and Unemp.  
 Station #8; effective date) and it is returned.

HB 619 was referred to the Chief Clerk for enrollment.

A message dated April 11, 1978 was read stating the Senate HCS  
 has concurred in the House amendment to COMMITTEE SUBSTITUTE 401 CSSB  
 FOR SENATE BILL NO. 401, thus adopting:

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE  
 SUBSTITUTE FOR SENATE BILL NO. 401  
 (supplemental appropriation to Department  
 of Public Safety and Department of Community  
 and Regional Affairs; effective date)

A message dated April 11, 1978 was read stating the Senate  
 has passed the following bill and it is transmitted for  
 consideration.

FIRST READING AND REFERENCE OF SENATE BILLS

SENATE BILL NO. 556 amended, by the Finance Committee, SB  
 entitled: 556  
 am

"An Act relating to medical assistance  
 for needy persons; and providing for an  
 effective date."

was read the first time and referred to the Committees  
 on Health, Education and Social Services and Finance.

REPORTS OF STANDING COMMITTEES

HB 97 The Judiciary Committee has had HOUSE BILL NO. 97 (termination of financing statements under the Uniform Commercial Code effective date) under consideration a second time and the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 97 (Judiciary)

"An Act relating to security interests under the Uniform Commercial Code, and providing for an effective date "

and that it be reported back with individual recommendations. Gardiner (Chairman) and Rudd recommend do pass; Dankworth, Carpenter and Brown have no recommendation.

HB 97 was referred to the Rules Committee for placement on the calendar.

HB 682 The Finance Committee has had HOUSE BILL NO. 682 (nonrenewable resources revenues) under consideration and a majority of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 682 (Finance):

"An Act relating to the renewable resources funds."

and that it do pass. Concurring: Cowper (Chairman), Guy, Schaeffer, Meekins, Buchholdt, Duncan and Gruening. Not concurring: Freeman, Rhode, Haugen and Swanson have no recommendation.

HB 682 was referred to the Rules Committee for placement on the calendar.

A fiscal note on HB 682 appears in House Supplement 30.

The Finance Committee's letter of intent appears as follows:

HOUSE FINANCE COMMITTEE  
COMMITTEE REPORT ON CS HB682 (Finance)

The Renewable Resources Development Fund was established by the legislature in 1974 to provide for the rehabilitation, enhancement, and development of the state's renewable resources. The Fund consists of at least five percent of all mineral lease bonuses and royalties, and rentals from state lands. The proposed legislation establishes the Alaska Renewable Resources Corporation to invest half of the receipts of the Fund in renewable resource-based industries. The other half of the Fund would be saved through the Renewable Resources Investment Fund. The name of the Renewable Resources Permanent Fund (AS 37.11.050) is changed to the Renewable Resources Investment Fund to avoid confusion with the Alaska Permanent Fund (Article 9, section 15 of the Alaska State Constitution).

Investments of the Alaska Renewable Resources Corporation (ARRC) would focus on new products, markets, and technologies which are the key components of expanded renewable resource-based economic activity. Products and markets result from any economic use of the resources, while technologies include the methods for managing, harvesting, processing, or delivering the resources to market. ARRC would also provide funds for the applied research, development and demonstration of new renewable resource-based activities, and the seed capital necessary to introduce them into commercial markets.

HB  
682

For the earliest stages of renewable resource industry development (applied research and development), the Committee does not envision ARRC funding of general or basic research by university or other scientific research organizations. This type of research is covered by other programs. Rather, ARRC-funded applied research and development activity would utilize the fruits of basic research to develop specific products or processes for commercial purposes.

In addition to stimulation of new economic activity based on the state's renewable resources, investment goals also include the maintenance or expansion of resource productivity, the development of in-state and export markets, and the expansion of resident employment, income, and governmental revenues from renewable resource development.

The term renewable resources is defined in terms of the resource base, which remains relatively constant over time, rather than in terms of economic activity, which changes over time. Accordingly, non-human living organisms, air, land, water, and naturally recurring energy systems are intended as the target of investment activity. In the tourism industry, for example, the Committee contemplates investment in the resources on which the industry is partially based, such as sport fishing, but not such capital components of the industry as hotels and lodging facilities.

An integral part of the bill is the concept of achieving an appropriate use of the resources. As trustees of our renewable resources the state is constitutionally directed to seek the most beneficial uses. ARRC investment decisions should consider both expected financial returns and the effects of resource development on both the target resource and on other resources. Achieving appropriate resource use at the inception of economic activity will greatly benefit the state and its residents by avoiding longer-run regulatory and rehabilitation burdens resulting in more stable economic activity based on all of the state's renewable resources.

In its deliberations, the Committee determined that the most effective method of investment includes both equity and debt secured by a variety of mechanisms to provide a return to the corporation when an investment starts to generate income. Such methods maximize incentives for entrepreneurship through ARRC sharing of the risks inherent in new ventures and imposing no debt service burdens until the enterprise is earning income. The corporation would in turn receive high returns from its successful investments, commensurate with the risks undertaken.

The Committee identified three important types of activity which may have no income producing potential (depending on the specifics of the project) and therefore must be funded through grants. These include applied research (which directs basic research toward specific products and processes for commercial purposes), one-time-only demonstrations, and common property resource projects where the benefits accrue to the general public. Funds available for grants are limited to ten percent of the corporation's annual appropriation and to ninety percent of a project's costs.

HB 682 In addition to the lack of start-up capital, the Committee found that another major obstacle to renewable resource development is a shortage of Alaskans trained in new harvesting, processing, or marketing techniques and business management skills. CS HB682 provides for the corporation to finance technical assistance to supplement the expertise of its applicants. The corporation is specifically forbidden, however, from managing its projects. The costs of this assistance are to be included in the overall project financing and are to be repaid by the borrower.

The flow of funds, as established in AS 37.11 (Renewable Resources Development Fund), begins with the deposit of at least five percent of all mineral lease bonuses and royalties, and rentals from state lands, into the Renewable Resources Development Fund. Under the proposed legislation, half of this amount would be allocated to the ARRC and half would be allocated to the Renewable Resources Investment Fund. Under existing law (AS 37.11.060), only those funds not expended out of the Development Fund would be deposited in the Investment Fund. When the Investment Fund reaches \$250 million, the five percent flow into the Development Fund ceases and the only further source of money under this program is the income from the Investment Fund. The Committee was concerned that this system creates an incentive to spend out of the Development Fund to prevent the Investment Fund from ever reaching the \$250 million cap. Therefore the fifty-fifty split was devised as a "forced savings" both to remove this incentive to spend and to insure the availability of Investment Fund income in perpetuity.

Investment Fund principle under the bill would be invested by the treasury division of the Department of Revenue in secure investments (under AS 39.35.110). The earnings from these investments would be available for legislative appropriation to programs for the rehabilitation, enhancement, and development of the state's renewable resources. The bill proposes as the primary use of Investment Fund income the restoration of the state's renewable resources. Because restoration of public natural resources in most cases is not a direct profit generating activity, the state must take the lead in performing this essential public purpose. Restoration includes such activities as fish hatcheries, land reclamation and habitat improvement.

The allocation into the corporation would be available for investments or grants as described above. The corporation would be subject to the Executive Budget Act (37.07) and may expend money only as appropriated by the legislature. The earnings from corporation investments, and unexpended or unobligated appropriations from previous fiscal years, may be retained by the corporation for expenditure through subsequent appropriations. The operating budget of the ARRC would come from legislative appropriations from the general fund.

HB 692 The Finance Committee has had HOUSE BILL NO. 692 (requiring the election pamphlet to contain fiscal information for ballot propositions) under consideration and a majority of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 692 (Finance):

"An Act requiring the election pamphlet to contain fiscal information for ballot propositions; and providing for an effective date."

and that it do pass. Concurring: Cowper (Chairman), Freeman, Rhode, Haugen, Guy, Schaeffer, Swanson and Buchholdt. Not concurring: Gruening has no recommendation.

HB 692 was referred to the Rules Committee for placement on the calendar. HB 692

The Commerce Committee has had HOUSE BILL NO. 778 (skiing and the regulation of skiing facilities; effective date) under consideration and a majority of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 778 (same title) and that it be reported back without recommendation. Concurring: McKinnon (Chairman), Chatterton, Bradley and Parr. Not concurring: Hayes recommends do pass. HB 778

HB 778 was referred to the Rules Committee for placement on the calendar.

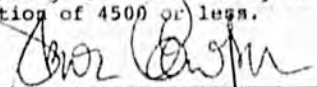
The Finance Committee has had HOUSE BILL NO. 861 (special appropriations to the Alaska Housing Finance Corporation; effective date) under consideration and a majority of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 861 (same title) and that it do pass. Concurring: Gruening, Duncan, Meekins, Buchholdt, Swanson, Schaeffer, Guy, Haugen, Rhode and Freeman. Not concurring: Cowper (Chairman) has no recommendation. HB 861

HB 861 was referred to the Rules Committee for placement on the calendar.

The Finance Committee's letter of intent on CSHB 861 appears as follows:

HOUSE FINANCE COMMITTEE  
Letter of Intent CSHB 861

Sec. 2 of CSHB 861 appropriates \$1,000,000 to the rural housing insurance account of the mortgage insurance fund of the Alaska Housing Finance Corporation for the benefit of rural housing programs. It is the intent of the House, for the purposes of this section, that the Alaska Housing Finance Corporation construe "rural" to be those communities of the state which do not have access to Anchorage or Fairbanks by road or railroad and that have a population of 4500 or less.

  
Steve Cowper, Chairman  
House Finance Committee

CITATIONS

Legislative Citation Commending Cindy Roberts, by Representative Dankworth, was read and referred to the Rules Committee for placement on the calendar.

INTRODUCTION, FIRST READING AND REFERENCE  
OF HOUSE RESOLUTIONS

HCR HOUSE CONCURRENT RESOLUTION NO. 123 by the Judiciary  
123 Committee:

Requesting the judicial council to aid  
the Alaska court system in developing guide-  
lines for sentencing first felony offenders.

was introduced, read the first time and referred to the  
Judiciary Committee.

HJR HOUSE JOINT RESOLUTION NO. 70 by the Community and  
70 Regional Affairs Committee:

Supporting a comprehensive Alaska-based  
civil rights in education assistance  
center.

was introduced, read the first time and referred to the  
Community and Regional Affairs Committee.

HJR HOUSE JOINT RESOLUTION NO. 71 by the State Affairs  
71 Committee:

Proposing an amendment to the  
Constitution of the State of Alaska  
increasing the membership of each  
chamber of the legislature.

was introduced, read the first time and referred to the  
Committees on State Affairs and Judiciary.

INTRODUCTION, FIRST READING AND REFERENCE  
OF HOUSE BILLS

HB HOUSE BILL NO. 925 by the State Affairs Committee by  
925 request, entitled:

"An Act establishing the Alaska Film  
Commission."

was introduced, read the first time and referred to the  
Committees on Commerce and Finance.

HB HOUSE BILL NO. 926 by the State Affairs Committee by  
926 request, entitled:

"An Act making a special appropriation  
to the Alaska Film Commission for the costs  
of its operations for one year; and pro-  
viding for an effective date."

was introduced, read the first time and referred to the  
Committees on Commerce and Finance.

HOUSE BILL NO. 927 by the Rules Committee by request of  
the Governor, entitled:

HB  
927

"An Act making a supplemental appropriation  
to the Department of Natural Resources,  
Federal-State Land Use Planning Commission;  
and providing for an effective date."

was introduced, read the first time and referred to the  
Finance Committee

The Governor's transmittal letters appear following the  
bill to which each pertains.

"April 12, 1978

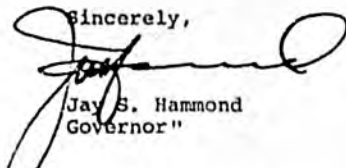
The Honorable Hugh Malone  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska  
Constitution, and in accordance with AS 24.30.060(b)  
and the Uniform Rules of the Alaska State Legislature,  
I am transmitting a bill making a supplemental appro-  
priation to the Department of Natural Resources, "Federal-  
State Land Use Planning Commission."

This appropriation will be used to fund unanticipated  
wage increases and full operation of the commission  
during FY 79.

Sincerely,



Jay S. Hammond  
Governor"

HOUSE BILL NO. 928 by the Rules Committee by request of  
the Governor, entitled:

HB  
928

"An Act making a supplemental appropriation  
to the Department of Natural Resources,  
Office of the Commissioner; and providing  
for an effective date."

was introduced, read the first time and referred to the  
Finance Committee.

HB  
928

"April 12, 1978

The Honorable Hugh Malone  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

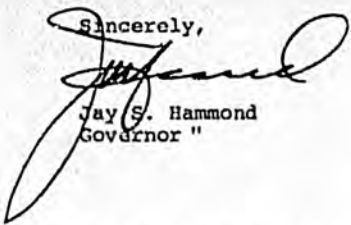
Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making a supplemental appropriation to the Department of Natural Resources, Office of the Commissioner

This request is made to fund legal services for the state to continue participation in the Cook Inlet LNG rate-making proceedings.

Fiscal information is enclosed.

Sincerely,



Jay S. Hammond  
Governor "

HB HOUSE BILL NO. 929 by the Rules Committee by request of  
929 the Governor. entitled:

"An Act making a supplemental appropriation to the Department of Health and Social Services, Violent Crimes Compensation Board, and providing for an effective date."

was introduced, read the first time and referred to the Finance Committee.

"April 12, 1978

The Honorable Hugh Malone  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

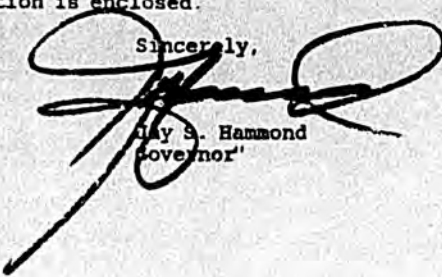
Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making a supplemental appropriation to the Department of Health and Social Services, Violent Crimes Compensation Board.

The board has twenty-eight claims pending at this time, three of which are death claims. Additional claims are filed every day. Although the board has been prudently awarding claims, it was difficult to accurately predict the number and amount of claims during the budget process. This supplemental request is necessary in order to carry out the Violent Crimes Compensation Program as intended.

HB  
929

Fiscal information is enclosed.

Sincerely,



Jay S. Hammond  
Governor

Mr. Miller moved and asked unanimous consent that the House stand in recess until 11:00 a.m. There being no objection, the House recessed at 10:52 a.m.

AFTER RECESS

The House was called to order at 11:09 a.m.

CONSIDERATION OF THE DAILY CALENDAR

SECOND READING OF HOUSE BILLS

HOUSE BILL NO. 582 (fisherman's fund) was read the second time with the Judiciary Committee report (p. 742, 1978 Journal).

HB  
582

Mr. Miller moved and asked unanimous consent that HB 582 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 582 was read the third time.

The question being: "Shall HB 582 pass the House?" The roll was taken with the following result:

Yeas: 32 Akers, Anderson, Bennett, Bradley, Buchholdt, Carpenter, Chatterton, Cotten, Cowper, Dankworth, Duncan, Freeman, Haugen, Hayes, Kelly, Lethin, Lovseth, Malone, Meekins, Miller, Nakak, Ose, Osterback, Parr, Phillips, Rhode, Rudd, Schaeffer, Smith, Snider, Swanson, Urion.

HB 582 Nays: 0  
 Excused: 8 Beirne, Brown, Eliason, Gardiner,  
 Gruening, Guy, McKinnon, Miles.

And so, HB 582 passed the House and was referred to the Chief Clerk for engrossment.

HB 608 HOUSE BILL NO. 608 (supplemental appropriations to the Department of Education, pupil transportation and student loan computer; effective date) was read the second time with the Health, Education and Social Services Committee report (p. 173, 1978 journal) and the Finance Committee report (p. 743, 1978 journal).

Mr. Miller moved and asked unanimous consent that HB 608 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 608 was read the third time.

The question being: "Shall HB 608 pass the House?" The roll was taken with the following result:

Yeas: 34 Akers, Anderson, Bennett, Bradley, Buchholdt, Carpenter, Chatterton, Cotten, Cowper, Dankworth, Duncan, Freeman, Gardiner, Gruening, Hayes, Kelly, Lovseth, McKinnon, Malone, Meekins, Miles, Miller, Nakak, Ose, Osterback, Parr, Phillips, Rhode, Rudd, Schaeffer, Smith, Snider, Swanson, Urion.

Nays: 1 Lethin.

Excused: 5 Beirne, Brown, Eliason, Guy, Haugen.

And so, HB 608 passed the House.

Mr. Miller moved and asked unanimous consent that the roll call on the passage of HB 608 be considered the roll call on the effective date clause. There being no objection, it was so ordered.

HB 608 was referred to the Chief Clerk for engrossment.

#### SECOND READING OF SENATE BILLS

CSSB 440 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 440 (special appropriation to the University of Alaska, Arctic Environmental Information and Data Center, for disbursement to the Alaska Eskimo Whaling Commission to assist voluntary efforts to ensure whale stock viability; effective date)

was read the second time with the Finance Committee report (p. 711, 1978 journal).

CSSB  
440

Mr. Miller moved and asked unanimous consent that HOUSE COMMITTEE SUBSTITUTE FOR CS FOR SENATE BILL NO. 440 (same title) be adopted in lieu of CSSB 440. There being no objection, it was so ordered.

HCS  
CSSB  
440

Mr. Miller moved and asked unanimous consent that HCS CSSB 440 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HCS CSSB 440 was read the third time.

The question being: "Shall HCS CSSB 440 pass the House?"  
The roll was taken with the following result:

Yeas:	33	Akers, Anderson, Bennett, Bradley, Brown, Buchholdt, Carpenter, Cotten, Cowper, Dankworth, Duncan, Freeman, Gardiner, Gruening, Guy, Hayes, Kelly, Lethin, Lovseth, McKinnon, Malone, Miles, Miller, Nakak, Osterback, Phillips, Rhode, Rudd, Schaeffer, Smith, Snider, Swanson, Urion.
Nays:	2	Chatterton, Parr.
Excused:	5	Beirne, Eliason, Haugen, Meekins, Ose.

And so, HCS CSSB 440 passed the House.

Mr. Miller moved and asked unanimous consent that the roll call on the passage of HCS CSSB 440 be considered the roll call on the effective date clause. There being no objection, it was so ordered.

HCS CSSB 440 was referred to the Chief Clerk for engrossment.

#### SECOND READING OF HOUSE RESOLUTIONS

HOUSE JOINT RESOLUTION NO. 49 (endorsing the Alaska Eskimo Whaling Commission Management Plan and urging its full support before the International Whaling Commission) was read the second time with the Special Committee on Subsistence Committee report (p. 341, 1978 journal) and the Resources Committee report (p. 373, 1978 journal).

HJR  
49

Mr. Miller moved and asked unanimous consent that HJR 49 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HJR 49 was read the third time.

HJR 49 The question being: "Shall HJR 49 pass the House?" The roll was taken with the following result:

Yeas: 34 Akers, Anderson, Bennett, Bradley, Brown, Buchholdt, Carpenter, Chatterton, Cotten, Cowper, Dankworth, Duncan, Freeman, Gardiner, Gruening, Hayes, Kelly, Lethin, Lovseth, McKinnon, Malone, Miles, Miller, Nakak, Osterback, Parr, Phillips, Rhode, Rudd, Schaeffer, Smith, Snider, Swanson, Urion.

Nays: 0

Excused: 6 Beirne, Eliason, Guy, Haugen, Meekins, Ose.

And so, HJR 49 passed the House and was referred to the Chief Clerk for engrossment.

Speaker Pro Tempore Miller assumed the Speaker's chair.

HCR 119 HOUSE CONCURRENT RESOLUTION NO. 119 (the use of herbicides on roadsides) which had been held over until today's calendar (p. 822 of the journal) was read the second time with the State Affairs Committee report (p. 788, 1978 journal).

Amendment No. 1 by Malone, Miller and Dankworth:

Page 1, line 21: Add "and" after semicolon between lines 21 and 22.

Whereas the use of complex chemicals along Alaska highways may also have unknown long-term effects on the human and animal populations of the state; and Whereas many Alaska residents have requested the state to halt spraying herbicides;

HCR 119 am Mr. Malone moved and asked unanimous consent that amendment No. 1 be adopted. There being no objection, it was so ordered.

Amendment No. 2 by Chatterton and Malone:

Page 1, line 24: After the word "herbicide" Add "or defoliant"

Mr. Chatterton moved and asked unanimous consent that amendment No. 2 be adopted. There being no objection, it was so ordered.

The Speaker voted at Mr. Miller desk.

Mr. Miller voted at the Speaker's station.

The question being: "Shall HCR 119 am pass the House?"  
The roll was taken with the following result:

HCR  
119  
am

Yeas: 30 Akers, Anderson, Bennett, Brown,  
Buchholdt, Carpenter, Chatterton,  
Cotten, Cowper, Dankworth, Duncan,  
Freeman, Gardiner, Gruening, Hayes,  
Kelly, Lethin, Lovseth, McKinnon,  
Malone, Miller, Nakak, Osterback,  
Parr, Phillips, Rhode, Rudd, Smith,  
Snider, Urion.

Nays: 0

Excused: 10 Beirne, Bradley, Eliason, Guy, Haugen,  
Meekins, Miles, Ose, Schaeffer, Swanson.

And so, HCR 119 am passed the House and was referred to the Chief Clerk for engrossment.

Speaker Malone resumed the Chair.

#### CITATIONS

Legislative Citation Congratulating Susan D. Merrick, by Representative Parr, was read.

Mr. Parr moved the approval of the Citation. The House approved the Citation unanimously and it was referred to the Chief Clerk for transmittal to the Senate.

#### UNFINISHED BUSINESS

Mr. Urion asked to take up the reconsideration of the vote on COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 884 (technical amendments relating to oil and gas taxes; effective date) at this time.

CSHB  
884

#### THIRD READING OF HOUSE BILLS

CSHB 884 was automatically before the House in third reading at this time and was read the third time.

Mr. Urion moved and asked unanimous consent that CSHB 884 be placed on tomorrow's calendar in third reading. There being no objection, it was so ordered.

COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 60 (requesting federal government to remove solid waste on land in Alaska in accordance with Resources Conservation & Recovery Act) and the Senate amendment, namely, SENATE COMMITTEE SUBSTITUTE FOR CS FOR HJR 60 (same title) (p. 806 of the journal) were before the House at this time.

CS  
HJR  
60

Mr. Miller moved that the House concur in the Senate amendment to CS HJR 60.

CS The question being: "Shall the House concur in the Senate  
HJR amendment to CS HJR 60?" The roll was taken with the  
60 following result:

Yeas: 26 Anderson, Bennett, Brown, Buchholdt,  
Carpenter, Chatterton, Cotten, Cowper,  
Dankworth, Freeman, Gardiner, Gruening,  
Hayes, Lethin, McKinnon, Malone,  
Miller, Nakak, Osterback, Parr,  
Phillips, Rhode, Rudd, Smith, Snider,  
Urion.

Nays: 0

Excused: 14 Akers, Beirne, Bradley, Duncan, Eliason,  
Guy, Haugen, Kelly, Lovseth, Meekins,  
Miles, Ose, Schaeffer, Swanson.

SCS And so, the House concurred in the Senate amendment, thus  
CS adopting SENATE COMMITTEE SUBSTITUTE FOR CS FOR HOUSE  
HJR JOINT RESOLUTION NO. 60 (same tit  
60

The Chief Clerk was instructed to so notify the Senate.

SCS CS HJR 60 was signed by the Speaker and the Chief  
Clerk and referred to the Chief Clerk for enrollment.

Mr. Urion moved and asked unanimous consent that Mr.  
Eliason be excused from a call of the House on April 14,  
1978. There being no objection, it was so ordered.

#### ENGROSSMENT

The following were engrossed, signed by the Speaker and  
Chief Clerk and transmitted to the Senate for considera-  
tion:

HCR 119 am	HCR 119 amended
HJR 49	HJR 49
HB 582	HB 582
HB 608	HB 608
HCS CSSB 440	HCS CSSB 440

#### ANNOUNCEMENTS

Finance		
Bond issues;		
Capital Appropriations;		
HB 832	Capitol 411	1:15 p.m., 4/12
Capital Budget		9:00 a.m., 4/13
State Affairs		
HB 857	Capitol 123-A	1:15 p.m., 4/12

April 12, 1978

HOUSE JOURNAL

843

Resources

HB 821, HCR 104,105

Capitol 118

1:30 p.m., 4/12

HESS

HB 891

Capitol 110

3:00 p.m., 4/12

HB 896,897

Capitol 110

7:30 p.m., 4/12

Judiciary

Joint w/Senate &

Alaska Judicial Council

Court Room A

3:00 p.m., 4/12

Labor & Management

SSHB 550; other bills  
previously considered  
if time permits

Assembly 207

8:00 a.m., 4/13

Democratic Luncheon

Rep. Duncan, Speaker

Capital Room

Noon, 4/12

Rules

Advance Notice:

HB 661 will be placed  
on Friday's Calendar

4/14

ADJOURNMENT

Mr. Miller moved and asked unanimous consent that the House adjourn until 10:00 a.m., April 13, 1978. There being no objection, the House adjourned at 12:20 p.m.

Irene Cashen  
Chief Clerk

# HOUSE JOURNAL

## ALASKA STATE LEGISLATURE TENTH LEGISLATURE - SECOND SESSION

---

JUNEAU, ALASKA

Tuesday

April 18, 1978

---

### One Hundredth Day

Pursuant to adjournment, the House was called to order by Speaker Malone at 10:06 a.m.

Roll call showed all members present except Representatives Cowper, Meekins, Osterback and Rhode. Representatives Cowper and Rhode had been previously excused from a call of the House today.

Mr. Miller moved and asked unanimous consent that Mr. Meekins be excused from a call of the House today. There being no objection, it was so ordered.

Mr. Miller moved and asked unanimous consent that Mr. Osterback be excused on official state business. There being no objection, it was so ordered.

The prayer was offered by the Chaplain, Pastor Robert McNabb of the Douglas Community United Methodist Church. Mr. Parr moved and asked unanimous consent that the prayer be spread on the journal. There being no objection, it was so ordered and the prayer appears as follows:

"As we still ourselves in Your presence, O God,  
give us thankful hearts for such moments  
when we can find refreshment for our souls,  
guidance for our minds, and a love for our lives.

We pray for those within these walls burdened  
with great decisions and worrisome problems.  
Help them to weigh carefully those things  
that confront them as they pertain to the  
good of our state.

Grant them courage to do right, strength to  
withstand the wrong, that they may serve all  
to Your glory. Amen."

Mr. Miller moved and asked unanimous consent that the journal for the 99th day and House Supplements No. 32 and No. 33 be approved as certified. There being no objection, it was so ordered.

MESSAGES FROM THE SENATE

A message dated April 17, 1977 was read stating the Senate accepts the invitation to meet in joint session April 25 at 2:00 p.m. for consideration of the Governor's appointees.

REPORTS OF STANDING COMMITTEES

SB 428 am The Resources Committee has had SENATE BILL NO. 428 amended (commercial fishing interim-use permits, entry permits, and vessel licenses) under consideration and a majority of the committee recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 428 (same title) and that it do pass. Concurring: Osterback (Chairman), Smith, Miller, Snider and Malone. Not concurring: Urion, Akers and Bennett have no recommendation.

SB 428 am was referred to the Judiciary Committee.

The Resources Committee's letter of intent on the above bill appears as follows:

"LETTER OF INTENT

The Honorable Hugh Malone  
Speaker of the House

Dear Mr. Speaker:

In passing out the Committee Substitute for SB 428 am the Committee hereby recommends that the Judiciary Committee review the new language in the bill.

Sincerely,

  
Alvin Osterback, Chairman  
House Resources Committee"

HB 99 The Health, Education and Social Services Committee has had HOUSE BILL NO. 99 (liability for expense of hospitalization of mentally ill individuals; effective date) under consideration a second time and a majority of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 99 (same title) and that it do pass. Concurring: Parr (Chairman), Nakak, Chatterton, Cotten, Phillips, Buchholdt and Bennett. Not concurring: Beirne recommends do not pass unless amended.

HB 99 was referred to the Rules Committee for placement on the calendar.

The State Affairs Committee has had HOUSE BILL NO. 546 (state regulation of fireworks; effective date) under consideration and the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 546 (same title) and that it be reported back with individual recommendations. Bradley (Chairman), Miles and Nakak recommend do pass; Lethin, Dankworth and McKinnon have no recommendation.

HB  
546

HB 546 was referred to the Rules Committee for placement on the calendar.

The State Affairs Committee's letter of intent on the above bill appears as follows:

"LETTER OF INTENT"

April 13, 1978

The Honorable Hugh Malone  
Speaker of the House

RE: CS for HB 546

Dear Mr. Speaker,

The Committee on State Affairs has had HB 546 under consideration and recommends that it be replaced with CS for HB 546.

The major thrust of the bill amounts to the following changes in the fireworks laws:

- A. Elimination of the requirement that the state and all governmental subdivisions of the state be named as insured parties on the person's insurance policy.
- B. Deletion as a prerequisite to selling salable fireworks the acquisition of product liability insurance.

Through research and testimony from the Administration, the Committee came to the following conclusions:

1. That such insurance requirements do in fact discriminate in favor of large out of state fireworks companies. The little instate guys cannot get insurance even from Lloyd's of London because of the statutory requirements.
2. No clearly justified benefits -- either to the state or a possible injured party -- exist with the inclusion of these provisions.

Sincerely,

  
Rep. Bob Bradley, Chairman  
House State Affairs Committee"

HB 658 The State Affairs Committee has had HOUSE BILL NO. 658 (construction performed by the Department of Transportation and Public Facilities) under consideration and the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 658 (same title) and that it be reported back with individual recommendations. Bradley (Chairman) and Nakak recommend do pass; Kelly, Lethin and Dankworth recommend do not pass.

HB 658 was referred to the Finance Committee.

HB 673 The Special Committee on Subsistence has had HOUSE BILL NO. 673 (creating a division of subsistence hunting and fishing) under consideration and a majority of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 673:

"An Act establishing a division of subsistence hunting and fishing."

and that it do pass. Concurring: Anderson (Chairman), Cotten, Schaeffer, Guy, Akers, Nakak and Hayes.

HB 673 was referred to the Resources Committee.

HB 722 The Finance Committee has had HOUSE BILL NO. 722 (science and technology) under consideration and the committee recommends it be replaced with the State Affairs COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 722 (same title) and that it be reported back with individual recommendations. Cowper (Chairman), Freeman, Haugen and Gruening recommend do pass; Guy, Schaeffer and Buchholdt have no recommendation; and Swanson recommends do not pass.

HB 722 was referred to the Rules Committee for placement on the calendar.

A corrected fiscal note on HB 722 appears in House Supplement 34.

HB 766 The Community and Regional Affairs Committee has had HOUSE BILL NO. 766 (authorizing home rule and general law municipalities to exempt contractors from certain bond requirements in the construction or repair of public works projects) under consideration and a majority of the committee recommends it be replaced with the Labor and Management COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 766 (same title) and that it do pass. Concurring: Lovseth, Anderson, Snider, Nakak and Smith. Not concurring: Rudd (Chairman), Phillips and Kelly have no recommendation.

HB 766 was referred to the Rules Committee for placement on the calendar.

The Resources Committee has had HOUSE BILL NO. 887 (special appropriation to the Department of Natural Resources to acquire land for establishment of the Funny River State Wayside; effective date) under consideration and a majority of the committee recommends it do pass. Concurring: Osterback (Chairman), Miller, Snider, Akers and Malone. Not concurring: Urion and Smith have no recommendation.

HB  
887

HB 887 was referred to the Finance Committee.

The Health, Education and Social Services Committee has had HOUSE BILL NO. 897 (special appropriation to the Department of Health and Social Services, division of public health, for expenses of the emergency medical services section and to provide grants-in-aid for the support of emergency medical services; effective date) under consideration and a majority of the committee recommends it do pass. Concurring: Parr (Chairman), Nakak, Chatterton, Cotten, Phillips, Buchholdt and Beirne.

HB  
897

HB 897 was referred to the Finance Committee.

#### CITATION

Legislative Citation Congratulating Cindy Roberts, by Representative Dankworth and Senator Colletta, was read and referred to the Rules Committee for placement on the calendar.

#### INTRODUCTION, FIRST READING AND REFERENCE OF HOUSE BILLS

HOUSE BILL NO. 940 by the Rules Committee by request, entitled:

HB  
940

"An Act establishing the public school foundation program special education assessment and diagnostic services formula."

was introduced, read the first time and referred to the Committees on Health, Education and Social Services and Finance.

Mr. Miles announced a Democratic caucus upon recess.

Mr. Urion announced a Republican caucus upon recess.

Mr. Miller moved and asked unanimous consent that the House stand in recess to a call of the Chair for the purpose of party caucuses. There being no objection, the House recessed at 10:20 a.m.

AFTER RECESS

Speaker pro tempore Miller assumed the Chair and called the House to order at 11:06 a.m.

CONSIDERATION OF THE DAILY CALENDARSECOND READING OF HOUSE BILLS

HB HOUSE BILL NO. 87 (appropriations and grants from boroughs  
87 to service areas and cities; effective date) which had been held until today's calendar (page 893 of the journal) was read the second time with the Community and Regional Affairs Committee report (page 373 of the journal) and the Judiciary Committee report (page 819 of the journal).

Mr. Malone moved and asked unanimous consent that  
COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 87 (same title)  
CSHB be adopted in lieu of HB 87. There being no objection,  
87 it was so ordered.

Amendment No. 1 by Carpenter and Brown:

Page 1, line 14, following "service" through line 16:

Delete the remainder of the sentence and insert:

if the power to use areawide taxes or other areawide revenues to finance special services of a service area has been acquired by holding an areawide election on the question. The vote on the question shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of votes cast in each classification is favorable, the power is adopted. After enactment of an authorizing ordinance the borough may make appropriations for the purpose authorized.

Page 1, line 22, following the word "perform" delete:

" Grants so made shall be authorized by borough ordinance." and insert:

if the power to use areawide taxes or other areawide revenues for grants to cities has been acquired by holding an areawide election on the question. The vote on the question shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of votes cast in each classification is favorable, the power is adopted. After enactment of an authorizing ordinance the borough may make appropriations for the purpose authorized.

Mr. Brown moved and asked unanimous consent that amendment CSHB No. 1 be adopted. 87

Mr. Malone objected.

Amendment to amendment No. 1 by Malone:

Page 1, line 14, following "service" through line 16:

Delete the remainder of the sentence and insert:

if the power to use areawide taxes or other areawide revenues to finance special services of a service area has been acquired by holding an areawide election on the question.

Delete remainder of paragraph in amendment No. 1.

Page 1, line 22, following "perform" delete ". Grants so made shall be authorized by borough ordinance." and insert:

if the power to use areawide taxes or other areawide revenues for grants to cities or service areas has been acquired by holding an areawide election on the question.

Delete remainder of paragraph in amendment No. 1.

Mr. Malone moved and asked unanimous consent that amendment to amendment No. 1 be adopted.

Mr. Brown objected.

Mr. Malone voted at Mr. Miller's desk.

Speaker pro tempore Miller voted at the Speaker's chair.

The question being: "Shall amendment to amendment No. 1 be adopted?" The roll was taken with the following result:

Yeas:	25	Akers, Anderson, Bradley, Buchholdt, Chatterton, Cotten, Duncan, Eliason, Freeman, Gardiner, Gruening, Guy, Lovseth, McKinnon, Malone, Meekins, Miles, Miller, Nakak, Ose, Osterback, Parr, Rudd, Schaeffer, Snider.
Nays:	13	Beirne, Bennett, Brown, Carpenter, Dankworth, Haugen, Hayes, Kelly, Lethin, Phillips, Smith, Swanson, Urion.
Excused:	2	Cowper, Rhode.

Mr. Akers changed his vote from nay to yea.

CSHB And so, amendment to amendment No. 1 was adopted.  
87  
am

Mr. Malone withdrew his objection to the adoption of amendment No. 1.

There being no further objection, amendment No. 1 as amended was adopted.

Mr. Malone moved and asked unanimous consent that CSHB 87 am be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 87 am was read the third time.

The question being: "Shall CSHB 87 am pass the House?"  
The roll was taken with the following result:

Yeas:	29	Akers, Anderson, Belrne, Bradley, Brown, Buchholdt, Chatterton, Cotten, Duncan, Eliason, Freeman, Gardiner, Gruening, Guy, McKinnon, Malone, Meekins, Miles, Miller, Nakak, Ose, Osterback, Parr, Rudd, Schaeffer, Smith, Snider, Swanson, Urion.
Nays:	9	Bennett, Carpenter, Dankworth, Haugen, Hayes, Kelly, Lethin, Lovseth, Phillips.
Excused:	2	Cowper, Rhode.

Mr. Lovseth changed his vote from yea to nay.

And so, CSHB 87 am passed the House.

Mr. Malone moved and asked unanimous consent that the roll call on the passage of CSHB 87 am be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 87 am was referred to the Chief Clerk for engrossment.

Speaker Malone resumed the Chair.

HB HOUSE BILL NO. 682 (nonrenewable resource revenues) was  
682 read the second time with the Special Committee on the Alaska Permanent Fund's report (page 522 of the journal) and the Finance Committee report (pages 830 - 832 of the journal).

Mr. Miller moved and asked unanimous consent that COMMITTEE CSHB SUBSTITUTE FOR HOUSE BILL NO. 682 (Finance) (renewable 682 resources funds) be adopted in lieu of HB 682. There being (Fin) no objection, it was so ordered.

Mr. Miller moved and asked unanimous consent that CSHB 682 (Finance) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 682 (Finance) was read the third time.

The question being: "Shall CSHB 682 (Finance) pass the House?" The roll was taken with the following result:

Yeas:	27	Akers, Anderson, Beirne, Bradley, Brown, Buchholdt, Cotten, Duncan, Eliason, Freeman, Gardiner, Gruening, Guy, Kelly, McKinnon, Malone, Meekins, Miles, Miller, Nakak, Ose, Osterback, Parr, Rudd, Schaeffer, Smith, Snider.
Nays:	11	Bennett, Carpenter, Chatterton, Dankworth, Haugen, Hayes, Lethin, Lovseth, Phillips, Swanson, Urion.
Excused:	2	Cowper, Rhode.

And so, CSHB 682 (Finance) passed the House and was referred to the Chief Clerk for engrossment.

Mr. Lethin asked that the reconsideration of the vote on HOUSE BILL NO. 621 (unemployment insurance coverage for employees of the state and its political subdivisions; effective date) be taken up at this time. HB 621

#### THIRD READING OF HOUSE BILLS

HB 621 was automatically before the House in third reading at this time and was read the third time.

Mr. Lethin moved and asked unanimous consent that HB 621 be held over in third reading and placed on tomorrow's calendar. There being no objection, it was so ordered.

#### SECOND READING OF HOUSE RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 108 (Alaska Industrial Development Authority) was read the second time with the Commerce Committee report (page 819 of the journal). HCR 108

CS

HCR Mr. Miller moved and asked unanimous consent that COMMITTEE  
108 SUBSTITUTE FOR HOUSE CONCURRENT RESOLUTION NO. 108 (same  
title) be adopted in lieu of HCR 108. There being no  
objection, it was so ordered.

Amendment No. 1 by Rudd:

Page 2, line 5: Delete "and"

Page 2, lines 6-15: Delete all material

Page 2 lines 23-24: Delete "until the labor dispute  
between Wien and its employees  
is settled, and"

Mrs. Rudd moved and asked unanimous consent that amendment  
No. 1 be adopted.

Mr. Urion objected.

Mr. Brown rose to a point of order.

The Speaker ruled that Mr. Urion's remarks were in order.

The question being: "Shall amendment No. 1 be adopted?"  
The roll was taken with the following result:

Yeas:	22	Akers, Anderson, Bennett, Brown, Buchholdt, Carpenter, Cotten, Dankworth, Gardiner, Gruening, Kelly, McKinnon, Malone, Meekins, Miles, Ose, Osterback, Phillips, Rudd, Smith, Snider, Swanson.
Nays:	15	Beirne, Bradley, Chatterton, Duncan, Freeman, Guy, Haugen, Hayes, Lethin, Lovseth, Miller, Nakak, Parr, Schaeffer, Urion.
Excused:	3	Cowper, Eliason, Rhode.

CS And so, amendment No. 1 was adopted.

HCR

108

am

Amendment No. 2 by Parr:

Page 2, line 6: Insert:

WHEREAS the state and its agencies must be neutral  
in labor disputes, and

WHEREAS favorable action by the Alaska Industrial  
Development Authority on the Wien Air Alaska, Inc.  
bonding proposal would put the state on the side  
of one party in an existing labor dispute;

Mr. Parr moved and asked unanimous consent that amendment No. 2 be adopted.

CSHCR  
108  
am

Mr. Urion objected.

The question being: "Shall amendment No. 2 be adopted?"  
The roll was taken with the following result:

Yeas:	16	Akers, Bennett, Bradley, Cotten, Duncan, Gardiner, Kelly, Malone, Miles, Miller, Ose, Parr, Phillips, Rudd, Schaeffer, Swanson.
Nays:	21	Anderson, Beirne, Brown, Buchholdt, Carpenter, Chatterton, Dankworth, Freeman, Gruening, Guy, Haugen, Hayes, Lethin, Lovseth, McKinnon, Meekins, Nakak, Osterback, Smith, Snider, Urion.
Excused:	3	Cowper, Eliason, Rhode.

And so, amendment No. 2 was not adopted.

The question now being: "Shall CSHCR 108 am pass the House?"  
The roll was taken with the following result:

Yeas:	25	Akers, Anderson, Bennett, Bradley, Brown, Buchholdt, Carpenter, Cotten, Duncan, Gardiner, Gruening, Guy, Kelly, McKinnon, Malone, Meekins, Miles, Miller, Osterback, Parr, Phillips, Rudd, Schaeffer, Smith, Swanson.
Nays:	12	Beirne, Chatterton, Dankworth, Freeman, Haugen, Hayes, Lethin, Lovseth, Nakak, Ose, Snider, Urion.
Excused:	3	Cowper, Eliason, Rhode.

And so, CSHCR 108 am passed the House and was referred to the Chief Clerk for engrossment.

#### CITATIONS

Mr. Cotten moved that the Citation - Commending Chugiak High School Wrestling Team, by Representatives Cotten, Kelly, Phillips and Bradley, be approved. The House approved the Citation unanimously and it was referred to the Chief Clerk for transmittal to the Senate.

Mr. Miller moved that the Citation - In Memoriam Ardelcie M. Stoneking, by Senator Croft, be approved. The House approved the Citation unanimously and it was referred to the Chief Clerk for return to the Senate.

UNFINISHED BUSINESS

Mr. Miller moved and asked unanimous consent that Mrs. Buchholdt be excused from a call of the House on April 24, 1978. There being no objection, it was so ordered.

HJR 57 Mr. Phillips brought up reconsideration of HOUSE JOINT RESOLUTION NO. 57 (designation of "America the Beautiful" as the national anthem) at this time.

THIRD READING OF HOUSE RESOLUTIONS

HJR 57 was automatically before the House in third reading at this time and was read the third time.

The question to be reconsidered is: "Shall HJR 57 pass the House?" The roll was taken with the following result:

Yeas:	9	Bradley, Buchholdt, Gruening, McKinnon, Malone, Meekins, Miller, Nakak, Rudd.
Nays:	26	Akers, Anderson, Beirne, Bennett, Carpenter, Chatterton, Cotten, Dankworth, Duncan, Freeman, Gardiner, Guy, Haugen, Hayes, Kelly, Lethin, Lovseth, Ose, Osterback, Parr, Phillips, Schaeffer, Smith, Snider, Swanson, Urion.
Excused:	5	Brown, Cowper, Eliason, Miles, Rhode.

And so, HJR 57 failed to pass the House on reconsideration of the vote.

HJR 57 was referred to the Chief Clerk for permanent filing.

ENGROSSMENT

The following were engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration:

CSHCR 108 am	CS HCR 108 amended
CSHB 87 am	CSHB 87 amended
CSHB 682 (Fin)	CSHB 682 (Finance)

ANNOUNCEMENTS

Resources Teleconference HB 915	Capitol 118	1:30 p.m., 4/18
Finance HB 442,906,927,928, 683,923,903	Capitol 411	2:00 p.m., 4/18
HESS HB 519	Capitol 110	3:00 p.m., 4/18
Judiciary HB 909,113	Capitol 124	3:00 p.m., 4/18
Special Committee on Sale of Royalty Oil and Gas Meeting cancelled		7:00 p.m., 4/18
Commerce CSSB 326 (Fin)	Court 628	8:00 a.m., 4/19
C&RA HB 875	Court 647	9:00 a.m., 4/19
State Affairs HB 568,620,751, HJR 62	Capitol 123-A	1:15 p.m., 4/19

ADJOURNMENT

Mr. Miller moved and asked unanimous consent that the House adjourn until 10:00 a.m., April 19, 1978. There being no objection, the House adjourned at 12:51 p.m.

Irene Cashen  
Chief Clerk

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

COMMITTEE REPORT

HOUSE

1/25/78

FURTHER: FINANCE

Date: 2-9-78

Mr. Speaker:

The Committee on SPEC. COM. ON THE PERM.FUND has had HB 682  
"an Act relating to nonrenewable resource revenues."

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

(x) recommends it be replaced with CS for HB 682

and it do pass HB 682 (x) new title (x) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Clark Greening  
Robert Workman

2

Clark Greening  
Chairman

DRAFT COMMITTEE REPORT ON CS HB682 (Finance)

The Renewable Resources Development Fund was established by the legislature in 1974 to provide for the rehabilitation, enhancement, and development of the state's renewable resources. The Fund consists of at least five percent of all mineral lease bonuses and royalties, and rentals from state lands. The proposed legislation establishes the Alaska Renewable Resources Corporation to invest half of the receipts of the Fund in renewable resource-based industries. The other half of the Fund would be saved through the Renewable Resources Investment Fund. The name of the Renewable Resources Permanent Fund (AS 37.11.050) is changed to the Renewable Resources Investment Fund to avoid confusion with the Alaska Permanent Fund (Article 9, section 15 of the Alaska State Constitution).

Investments of the Alaska Renewable Resources Corporation (ARRC) would focus on new products, markets, and technologies which are the key components of expanded renewable resource-based economic activity. Products and markets result from any economic use of the resources, while technologies include the methods for managing, harvesting, processing, or delivering the resources to market. ARRC would also provide funds for the applied research, development and demonstration of new renewable resource-based activities, and the seed capital necessary to introduce them into commercial markets.

For the earliest stages of renewable resource industry development (applied research and development), the Committee does not envision ARRC funding of general or basic research by university or other scientific research organizations. This type of research is covered by other programs. Rather, ARRC-funded applied research and development activity would utilize the fruits of basic research to develop specific products or processes for commercial purposes.

In addition to stimulation of new economic activity based on the state's renewable resources, investment goals also include the maintenance or expansion of resource productivity, the development of in-state and export markets, and the expansion of resident employment, income, and governmental revenues from renewable resource development.

The term renewable resources is defined in terms of the resource base, which remains relatively constant over time, rather than in terms of economic activity, which changes over time. Accordingly, non-human living organisms, air, land, water, and naturally recurring energy systems are intended as the target of investment activity. In the tourism industry, for example, the Committee contemplates

investment in the resources on which the industry is partially based, such as sport fishing, but not such capital components of the industry as hotels and lodging facilities.

An integral part of the bill is the concept of achieving an appropriate use of the resources. As trustees of our renewable resources the state is constitutionally directed to seek the most beneficial uses. ARRC investment decisions should consider both expected financial returns and the effects of resource development on both the target resource and on other resources. Achieving appropriate resource use at the inception of economic activity will greatly benefit the state and its residents by avoiding longer-run regulatory and rehabilitation burdens resulting in more stable economic activity based on all of the state's renewable resources.

In its deliberations, the Committee determined that the most effective method of investment includes both equity and debt secured by a variety of mechanisms to provide a return to the corporation when an investment starts to generate income. Such methods maximize incentives for entrepreneurship through ARRC sharing of the risks inherent in new ventures and imposing no debt service burdens until the enterprise is earning income. The corporation would in turn receive high returns from its successful investments, commensurate with the risks undertaken.

The Committee identified three important types of activity which may have no income producing potential (depending on the specifics of the project) and therefore must be funded through grants. These include applied research (which directs basic research toward specific products and processes for commercial purposes), one-time-only demonstrations, and common property resource projects where the benefits accrue to the general public. Funds available for grants are limited to ten percent of the corporation's annual appropriation and to ninety percent of a project's costs.

In addition to the lack of start-up capital, the Committee found that another major obstacle to renewable resource development is a shortage of Alaskans trained in new harvesting, processing, or marketing techniques and business management skills. CS HB682 provides for the corporation to finance technical assistance to supplement the expertise of its applicants. The corporation is specifically forbidden, however, from managing its projects. The costs of this assistance are to be included in the overall project financing and are to be repaid by the borrower.

The flow of funds, as established in AS 37.11 (Renewable Resources Development Fund), begins with the deposit of at least five percent of all mineral lease bonuses and royalties, and rentals from state lands, into the Renewable Resources Development Fund. Under the proposed legislation, half of this amount would be allocated to the ARRC and half would be allocated to the Renewable Resources Investment Fund. Under existing law (AS 37.11.060), only those funds not expended out of the Development Fund would be deposited in the Investment Fund. When the Investment Fund reaches \$250 million, the five percent flow into the Development Fund ceases and the only further source of money under this program is the income from the Investment Fund. The Committee was concerned that this system creates an incentive to spend out of the Development Fund to prevent the Investment Fund from ever reaching the \$250 million cap. Therefore the fifty-fifty split was devised as a "forced savings" both to remove this incentive to spend and to insure the availability of Investment Fund income in perpetuity.

Investment Fund principle under the bill would be invested by the treasury division of the Department of Revenue in secure investments (under AS 39.35.110). The earnings from these investments would be available for legislative appropriation to programs for the rehabilitation, enhancement, and development of the state's renewable resources. The bill proposes as the primary use of Investment Fund income the restoration of the state's renewable resources. Because restoration of public natural resources in most cases is not a direct profit generating activity, the state must take the lead in performing this essential public purpose. Restoration includes such activities as fish hatcheries, land reclamation and habitat improvement.

The allocation into the corporation would be available for investments or grants as described above. The corporation would be subject to the Executive Budget Act (37.07) and may expend money only as appropriated by the legislature. The earnings from corporation investments, and unexpended or unobligated appropriations from previous fiscal years, may be retained by the corporation for expenditure through subsequent appropriations. The operating budget of the ARRC would come from legislative appropriations from the general fund.

March 9, 1978

Mr. Earl H. Beistline, Dean  
School of Mineral Industry  
University of Alaska  
Fairbanks, Alaska 99701

Dear Earl:

Thank you for your letter of February 13, 1978 clarifying and expanding your testimony at the public hearing on the Permanent Fund Bills in Fairbanks.

House Bill 682, as it is written, does not allow non-renewable resource assistance but it will possibly provide for research into renewable and recyclable metals.

House Bill 596, Sec. 44.55.010, establishes the Alaska Enterprise Investment Corporation which invests in "financially sound small and medium scale productive private industries and community development projects in the State." Some of the projects you have listed appear to fit the general type of investments this section is directed towards.

The University Coal Research Laboratory would be a great asset to the State and I intend to follow this project. The major hang-up for mining in Alaska is, as you know, the D-2 question. If HR 39 passes in its present form, it will be some time before mining regains the stature it once had. Progress is being made, however, to inject some balance into the D-2 proposal presently being considered by Congress.

Thank you for your excellent testimony and detailed letter. I appreciate your taking the time to give us your educated opinions. Please feel free to contact me again on this or any other matter.

Cordially,

Representative Clark Gruening

CG:pt



UNIVERSITY OF ALASKA

FAIRBANKS, ALASKA 99701

February 13, 1978

The Honorable Clark Gruening, Representative  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Clark:

The consideration you and your legislative committee gave in holding a hearing on the Alaska Permanent Fund in Fairbanks on February 3, 1978 was very much appreciated.

My remarks at the hearing were directed toward having the same consideration given to non-renewable resource development as to renewable resource development. I believe both are important and, in fact, necessary to give diversification in industry that in turn will make for a strong Alaskan economy under a private enterprise system.

The mineral industry is one of our two basic industries, (the other being agriculture), upon which our society is based. By and large, minerals, other than fuels, once mined are available for use and reuse from then on for the benefit of all people. More minerals are required annually because of increasing population, increased per capita consumption and increased demands in developing countries - facts which your father well recognized in many of his excellent statements. In Alaska, many "small miners" are attempting to develop and mine various mineral deposits and often some may need some financial assistance to allow a good prospect to blossom into a successful operation. History shows that many of the large mines have developed from the initiative of prospectors and "small" companies working on mineral prospects.

House Bill No. 298, Sec. 37.13.020, b, (1) which states "assist the diversification of the economy of Alaska by making sound investments in Alaska's renewable and non-renewable resources" seems to allow application of the fund to both categories. If my interpretation is correct, then the policy as proposed in HB No. 682 will apply to both categories and this is good.

HB 682, Alaska Renewable Resources Corporation, Sec. 37.12.040, has for its purposes the following excellent points:

"(1) facilitate the rehabilitation, enhancement, and development of the state's renewable resources so as to strengthen the self-sustaining sectors of the state economy:

"(2) sponsor research and development of technologies and innovations for the rehabilitation and enhancement of the state's renewable resources to achieve their most appropriate use;

PLEASE REPLY BY AIRMAIL

UNIVERSITY OF ALASKA

The Honorable Clark Gruening  
Page two  
February 13, 1978

"(3) identify new products, markets, and technologies for renewable resource industries in the state; stimulate the research and development of these products, markets, and technologies; assist in the demonstration of their technical and economic feasibility; and assist in their introduction into commercial markets."

I believe that appropriate legislation should provide similar considerations for the non-renewable resources. Specific assistance for funding justifiable mineral projects from the Permanent Fund could include:

1. Loans for a mineral industry project once adequate reserves have been established.
2. Assistance in mineral exploration projects based on mineral occurrences patterned after the Federal Office of Mineral Exploration Program (OME) administered by the U. S. Geological Survey in the past. (OME pamphlet enclosed).

Funds expanded perhaps on a participating basis would be paid back from production if an ore deposit was proven. If not, the expenditures would be written off.

The Federal OME program has not had funds for new contracts since 1974. The only OME activity now consists of administering going projects that were active in 1974 or before. None are in Alaska.

3. Assistance for prospecting as distinguished from exploration patterned in part after a former state prospector assistance program, Alaska Statutes 27.05.140, which was repealed some years ago.
4. Loan or some type of front-end assistance for mineral affiliated projects such as: cement plant, power plants, petrochemical facilities, etc.

Also, enclosed is a copy of P.L. 95-87, 95th Congress, August 3, 1977, Surface Mining Control and Reclamation Act of 1977. Important to the University of Alaska are Title III, Title VIII and Title IX. Title VIII pertaining to a University Coal Research Laboratory is being pursued at present. Briefly, the program, if funded in fiscal '79, will allow the following items to be obtained at Federal expense.

Facility construction maximum	\$4,000,000
Equipment	1,500,000
New program start-up expense	500,000

UNIVERSITY OF ALASKA

The Honorable Clark Gruening  
Page three  
February 13, 1978

The operating program is on a 50-50 basis for five years. It is at this point that matching State funds will most likely be required to carry on the program. The type of research to further enhance utilization of the energy-coal resources in Alaska might logically be funded through the Alaska Permanent Fund if provisions were included for non-renewable resources paralleling the purposes of HB 682.

Copies of this letter have not been sent to other members of your committee but you may desire to do so.

I hope the foregoing explains my thoughts and if you have any questions on the above comments, please let me know.

Best wishes for a satisfying 1978 Legislative session.

Sincerely,



Earl H. Beistline  
Dean

EHB/jc

Enclosures: OME Pamphlet  
Public Law 95-87--August 3, 1977



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY

Office of Minerals Exploration  
345 Middlefield Road  
Menlo Park, California 94025

In response to your recent request, enclosed is a copy of the booklet *Exploration Assistance* that explains the program administered by the Office of Minerals Exploration.

We regret to inform you that no funds for financial assistance have been included in the federal budget for the OME program and applications are not being processed. Current activity consists of managing administrative and fiscal details on completed OME and DMEA contracts which have continuing royalty payment obligations. Should the program be revitalized, and we have no indication that it will be, a notice of resumption of operations would be issued and new applications would be processed and contracts prepared. There is no other federal assistance program for mining exploration.

Has not been →  
funded for new  
contracts since  
1974.

Sincerely yours,

H. K. Stager  
Field Officer  
OME, Region II

Enclosure

# Title 30—MINERAL RESOURCES

Chapter II—Geological Survey,  
Department of the Interior

## PART 229—REGULATIONS FOR OBTAINING FEDERAL ASSISTANCE IN FINANCING EXPLORATIONS FOR MINERAL RESERVES, EXCLUDING

## ORGANIC FUELS, IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS

These regulations are reproduced from the following Federal Register documents:

[F.R. Doc. 65-2294; Filed, Mar. 4, 1965; 8:46 a.m.]

[F.R. Doc. 66-7220; Filed, June 30, 1966; 8:46 a.m.]

[F.R. Doc. 67-10624; Filed, Sept. 11, 1967; 8:48 a.m.]

### GENERAL PROVISIONS

Sec.

- 229.1 Purpose
- 229.2 Definitions
- 229.3 Eligible minerals or mineral products.
- 229.4 Operator's property rights.

### APPLICATIONS

- 229.5 Form and filing.
- 229.6 Information required.
- 229.7 Criteria
- 229.8 Approval

### EXPLORATION CONTRACTS

- 229.9 Government participation.
- 229.10 Allowable costs.
- 229.11 Repayment by the operator.
- 229.12 Interest on amount of Government participation.
- 229.13 Limitation on the amount of Government participation.
- 229.14 Government not obligated to buy.
- 229.15 Title to and disposition of property.

AUTHORITY The provisions of this Part 229 issued under sec. 2(e), 72 Stat. 700, 30 U.S.C. 642(e).

### GENERAL PROVISIONS

#### 229.1 Purpose.

The regulations in this part govern the obtaining of Federal financial assistance in conducting exploration for mineral reserves, excluding organic fuels, in the United States, its territories or possessions.

#### 229.2 Definitions.

As used in this part:

(a) "Exploration" means the search, including related development work, for new or unexplored mineral deposits within a specified area or parcel of ground where geologic conditions favor their occurrence. Exploration using recognized and sound procedures, including standard geophysical and geochemical methods, may be conducted from the surface or underground to obtain pertinent geological and mineralogical information. The work shall not go beyond a reasonable delineation and sampling of a mineral deposit, and shall not be conducted primarily for mining or preparation for mining.

(b) "Operator" means an individual partnership, corporation, or other legal entity that is party to an exploration contract with the Government.

(c) "Secretary" means the Secretary of the Interior, or his authorized representative.

(d) "Government" and "Federal" means the United States of America.

(e) "Commercial sources" means banking institutions or other private sources of credit.

#### 229.3 Eligible minerals or mineral products.

(c) The following are eligible for Government financial assistance of 50 percent of the allowable costs of exploration:

Asbestos.	Kyanite (strategic).
Bauxite.	Manganese.
Beryllium.	Mica (strategic).
Cadmium.	Molybdenum.
Chromite.	Monazite.
Cobalt.	Nickel.
Columbium.	Quartz Crystal (piezoelectric).
Copper.	Rare Earths.
Corundum.	Selenium.
Diamond (industrial).	Sulphur.
Fluorspar.	Talc (block steatite).
Graphite (crucible flake).	Tellurium.
Iron Ore.	Thorium.
	Uranium.

(b) The following are eligible for Government financial assistance of 75 percent of the allowable costs of exploration:

Antimony.	Rutile.
Bismuth.	Silver.
Gold.	Tantalum.
Mercury.	Tin.
Platinum Group Metals.	

(c) Combinations of the minerals or mineral products named in paragraphs (a) and (b) of this section may be eligible for Government financial assistance of 62.5 percent of the allowable costs of exploration.

#### 229.4 Operator's property rights.

The operator must have and preserve the right to possession of the land (as owner, lessee, or otherwise) for a term at least sufficient to complete the exploration work (See 229.11(f) regarding repayment.) The operator shall devote the land and all existing improvements, facilities, buildings, installations, and appurtenances necessary to the purposes of the exploration.

### APPLICATIONS

#### 229.5 Form and filing.

An application for Federal financial assistance must be submitted in duplicate on forms which may be obtained from and filed with either:

Office of Minerals Exploration  
Geological Survey,  
Department of the Interior,  
Washington, D.C. 20242

or Field Offices, Office of Minerals Exploration, Geological Survey. The regions which they serve and their Post Office addresses are as follows:

Region I: Idaho, Montana, Oregon, and Washington—Room 656, West 920 Riverside Avenue, Spokane, Washington 99201.

Region II: Alaska, California, Hawaii, and Nevada—Building 2, 345 Middlefield Road, Menlo Park, California 94025.

Region III: Arizona, Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming—Building 25, Federal Center, Denver, Colorado 80225.

Region IV: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin—Room 11, Post Office Building, Knoxville, Tennessee 37902.

#### 229.6 Information required.

(a) Each application shall fully describe the proposed exploration, and shall include all detailed data called for by the application form. The Secretary may require the filing of additional information, including financial statements, reports, maps, or charts, and exhibits and such physical on-site examinations as seems necessary.

(b) The application must include evidence that funds for the exploration work are unavailable on reasonable terms from commercial sources. The evidence shall include information as to the commercial sources to which applications were made, the amounts requested, and the reasons why loans were not obtained.

(c) The application must include a certification by the applicant that he would not normally undertake the exploration at his sole expense under current conditions or circumstances.

#### 229.7 Criteria

The following factors will be considered and weighed in passing upon applications:

(a) The geologic probability of a significant discovery being made.

(b) The estimated cost of the exploration in relation to the size and grade of the potential deposit.

(c) The plan and method of conducting the exploration.

(d) The accessibility of the project area.

(e) The background and operating experience of the applicant.

(f) The applicant's title or right to possession of the property.

#### 229.8 Approval

If the application is approved, the Government may enter into an exploration contract with the applicant upon terms and conditions which the Secretary deems necessary and appropriate as set forth in the contract form furnished by the Government.

### EXPLORATION CONTRACTS

#### 229.9 Government participation.

The Government will contribute not more than the percent of the total allowable costs of exploration which is specified in each exploration project contract. The percent specified in each contract will depend upon the minerals or mineral product sought and the Government contribution provided by 229.3 at the time the contract is made.

#### 229.10 Allowable costs.

(a) The Government, to the extent provided in the exploration contract, will contribute to

(1) The necessary, reasonable, and direct actual costs of performing the exploration, including the costs of labor, supervision, and outside consultants;

operating materials, supplies, and equipment; initial rehabilitation or repair of existing buildings, installations, fixtures, and operating equipment; construction of buildings, fixed improvements, and installations; repairs and maintenance of operating equipment; analytical work, accounting, payroll and sales taxes, and employers' liability or employees' compensation insurance; payments by the operator to independent contractors; and such other necessary, reasonable, and direct actual costs as may be approved by the Government in the course of work; and

(2) The fixed unit costs agreed upon by the operator and the Government in terms of units of work to be performed (per foot of drifting, per foot of drilling, etc.) in lieu of actual costs.

(b) The Government will not contribute to costs incurred before the date of the contract, or to costs of or incident to:

(1) Acquiring, owning or possessing land with any existing improvements, facilities, buildings, installations, and appurtenances, or the depreciation and depletion thereof;

(2) General overhead, corporate management, interest and taxes (other than payroll and sales taxes);

(3) Insurance (other than employers' liability or employees' compensation insurance); and

(4) Damages to persons or property (other than authorized repair to or replacement of equipment or other property used in the work).

#### 229.11 Repayment by the operator.

(a) If the Secretary considers that as a result of the exploration, mineral or metal production from the area covered by the contract may be possible, he shall so certify in writing to the operator within the time specified in the contract.

(b) When the Secretary determines not to certify, he shall promptly so notify the operator provided the operator has completed all obligations under the contract.

(c) The operator shall pay the Government a royalty on all minerals or metals produced from the land described in the contract and any other royalty as may be provided therein:

(1) Irrespective of any certification of possible production—from the date of the contract to the date of notice that certification will not be made, or until the total amount contributed by the Government with interest is fully repaid, whichever occurs first; or

(2) Irrespective of any certification of possible production—if the Secretary, deeming it necessary and in the public interest, enters into an agreement to provide for royalty payments.

(3) If a certification of possible production is issued—for a period of ten years (or other period fixed by the contract not exceeding 25 years) from the date of the contract, or until the total amount contributed by the Government, with interest, is fully repaid, whichever occurs first.

(d) The Government's royalty shall be 5 percent of the "gross proceeds" (including a. v. bonuses, premiums, allowances, or other benefits) from the production sold, in the form sold (ore, concentrate, metal, or equivalent) at the point of delivery (the f.o.b. point) except, that charges of the buyer (not the operator or producer) arising in the regular course of his business, and shown on the buyer's settlement sheets as deductions (such as treatment processes performed by the buyer, sampling and assaying to determine the value of the production sold, and freight payable by the buyer to a carrier (not the operator or producer)) shall be allowed as deductions in arriving at the "gross proceeds" as that term is used in this section. No costs of the operator or producer are deductible in arriving at the "gross proceeds" as that term is used in this section. The term "treatment processes" as used in this paragraph means those processes (such as milling, concentrating, smelting, refining, or equivalent) applied to the crude ore or other production after it is extracted from the ground to put it into a commercially marketable form, excluding fabricating or manufacturing.

(e) If any production (ore, concentrate, metal, or equivalent) remains unsold or is not used by the operator or producer in integrated manufacturing or fabricating operations (for instance, if it is stockpiled) after the lapse of six months from the date it is extracted from the ground, the Government, at its option, may require the computation and payment of its royalty on the value of such production in the form (ore, concentrate, metal, or equivalent) it is in at the time the Government elects to exercise its option. If any production is used by the operator or producer in integrated manufacturing or fabricating operations, the Government's royalty on such production shall be computed on the "value" thereof in the form in which and at the time when it is used. "Value" as used in this section means what is or would be gross income from mining operations for percentage depletion purposes in Federal income tax determination, or the market value, whichever is greater.

(f) (1) To secure the payment of the Government's royalty, the contract shall provide for a lien upon the operator's interest in the land, upon any production from the land, and upon any interests in the land other than the operator's interest. However, the Secretary may accept the undertaking of a surety company or third person in lieu of a lien upon interests in the land other than the operator's interest. In circumstances where the Secretary deems it to be in the public interest, the requirement for a lien or other undertaking concerning interests in land, other than the lien upon the operator's interest, may be omitted from the Contract.

(2) If the operator is not the producer (for example, if the operator transfers or does not retain his interest in production or in the land), the operator shall remain liable for the payment of the Government's royalty.

(g) If, in any particular case, the Secretary finds that it would be more economical or practicable to compute the Government's royalty upon some basis other than "gross proceeds" or "value", as these terms are used in this section, or upon the production in some form other than that in which it is sold, held, or used in integrated operations, he may agree with the operator, either in the original exploration contract or by an amendment thereof, upon some other basis of computation.

(h) Nothing in this part shall be construed as imposing any obligation on the operator to engage in any mining or production operations.

(i) The Secretary may modify and adjust the terms and conditions of any contract to reduce the amount and terms of any royalty payment when he shall determine that such action is necessary and in the public interest.

#### 229.12 Interest on amount of Government participation.

(a) Simple interest is calculated from the first day of the month following the date Federal funds are made available until the period specified for royalty payments expires or until the amount of Federal funds contributed, including interest, is fully repaid, whichever occurs first.

(b) The rate of interest shall be fixed by the Secretary at not less than the rate the Department of the Interior would be required to pay if it borrowed from the Treasury, plus a two percent interest charge in lieu of the actual cost to the Government of administering the contract.

(c) Paragraphs (a) and (b) of this section shall not be construed to increase the rate of royalty or to extend the period for which the royalty is payable as set forth in 229.11.

#### 229.13 Limitation on the amount of Government participation.

No single contract shall authorize Government participation in excess of \$250,000.

#### 229.14 Government not obligated to buy.

Nothing in this part or in any contract entered into pursuant to this part shall be construed as imposing any obligation on the Government to purchase any materials mined or produced from the land which is the subject of such contract.

#### 229.15 Title to and disposition of property.

Facilities, buildings, fixtures, equipment, or other items or groups of items (such as pipe, rail, steel, etc.), costing more than \$50.00 each, paid for or purchased with funds contributed jointly by the operator and the Government, although title may be taken in the name of the operator, shall belong to the operator and the Government jointly, in proportion to their respective contributions to the extent set forth in the contract. The exploration contract shall make suitable provisions also for their disposal for the joint account of the operator and the Government.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY

APPLICATION FOR FINANCIAL ASSISTANCE IN MINERALS EXPLORATION

Pursuant to Public Law 85-701 (72 Stat. 700; 30 U.S.C. 641)

NAME OF APPLICANT (Full legal name and mailing address as they should appear on contract if one is executed)	APPLICANT DO NOT USE THIS BLOCK
	DOCKET NUMBER
	DATE RECEIVED
	REGION
	DIVISION CODE

BUSINESS ORGANIZATION (Check one)	LIST CORPORATE OFFICERS OR PARTNERS HERE, IF APPLICABLE		
	NAME	ADDRESS	TITLE
INDIVIDUAL <input type="checkbox"/>			
CORPORATION <input type="checkbox"/>			
PARTNERSHIP <input type="checkbox"/>			
OTHER (Specify) <input type="checkbox"/>			
STATE IN WHICH FIRM IS ORGANIZED			

MINERAL(S) FOR WHICH YOU WISH TO EXPLORE	PROPERTY NAME	LOCATION COUNTY	STATE
ESTIMATED COST OF PROJECT			

GENERAL INSTRUCTIONS

Before filling out this application, please read the *OME Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves* (30 CFR Chap. II). To assure prompt action, your application must provide all applicable material and information specified on the back of this application form. Avoid unnecessary correspondence and delays by submitting complete and accurate information. Please submit two copies of this application and all accompanying papers except as otherwise noted. Place your name and address on each sheet. Each item of information, maps, and reports required as a part of this application is described on the back of this form. Identify each attached statement by the item number to which it applies. If an item does not apply to your application, show the item number on your statement

and after it write "not applicable." Maps or sketches should be used to supplement narrative descriptions of the property location and boundaries in item 2, existing mine workings and geology in item 3, and the proposed exploration work in item 5. When this information is not too complex, all of it may be shown on one map or sketch. All documents and other attachments submitted as a part of this application, except those in item 3(g) which you mark to be returned, become the property of the Government and will not be returned to the applicant. Send true copies, *not originals*, of leases, contracts, and other documents which are an essential part of your business records. *File this application with the Department of the Interior, U.S. Geological Survey, Office of Minerals Exploration, Washington, D. C., 20242, or with the nearest OME Field Office.*

CERTIFICATION

The undersigned, whether as an individual, corporate officer, partner, or otherwise, both in his own behalf and acting for the applicant, certifies that the information set forth in this form and accompanying

papers is correct and complete, to the best of his knowledge and belief, and that he would not ordinarily undertake the proposed exploration under current conditions and circumstances at his sole expense.

\_\_\_\_\_  
DATED

\_\_\_\_\_  
BY (Signature)

\_\_\_\_\_  
TITLE

A willfully false statement or certification to any Department or Agency of the United States Government is a criminal offense. U.S. Code, Title 18, Sec. 1001.

## INFORMATION REQUIRED WITH THIS APPLICATION

(submit on accompanying pages)

### 1. Financial Eligibility:

(a) Submit evidence of efforts made within 90 days preceding the filing of this application to obtain credit from your bank of account and at least one other banking institution or other private source of credit. Such evidence shall include (1) true copies of your letters to credit sources which show date of loan request, amount and terms requested, and proposed use of loan funds and (2) true copies of replies from credit sources. If the loan was offered under terms which you consider unreasonable, state why you consider them so.

(b) List names and addresses of affiliated, parent, or controlling companies or organizations and state extent and nature of their interest.

(c) State how you propose to furnish your share of the cost of the exploration work.

### 2. Applicant's Rights in Land:

(a) State your interest in the land and mineral rights, whether owner, lessee, purchaser under contract, or other. If you are not the owner, submit one true copy of the lease, contract, or other document (with address of owner) under which you control the property. Describe all liens, mortgages, or other encumbrances on the land and state book and page number and official place where recorded.

(b) State the legal description (section, township, and range; metes and bounds; patent number of claims) of the land upon which you wish to explore and all adjacent land which you own or control. Describe any part of the land or workings which should not be subject to Government royalty and liens. If the land consists of unpatented claims, state book and page number for each recorded location notice, including amended locations, and official place where recorded. State all the names by which you know the property.

(c) For all land or mineral rights encumbered or not owned, submit five copies of Lien and Subordination Agreements signed by owner on MME Form 52. If the agreements cannot be obtained, state reasons and whether you can furnish a performance bond.

### 3. Physical Description:

(a) Describe in detail and illustrate with maps or sketches all mining or exploration operations which you know have been or are being conducted upon the land. Include existing mine workings and all production facilities.

(b) State your interest, if any, in operations described in (a).

(c) State, if you know, the past and current production, supporting your statement with copies of settlement sheets, mine records, or published data if available.

(d) Describe known ore reserves, giving quantities and grades.

(e) Describe by narrative and maps or sketches the geologic features of the property, including ore minerals, geologic formations if known, and type of deposit (vein, bedded, etc.).

(f) If you have sampled the area you propose to explore, show where the samples were taken, describe sampling methods used, and provide copies of assay certificates. State your reasons for expecting to find ore.

(g) Send with your application at least two copies of all geologic or engineering reports, assay maps, or technologic information which you have, indicating whether you require their return.

### 4. Accessibility of Property:

(a) To aid the OME representative who may examine the property state name, address, and telephone number of person who will meet him; give directions for reaching the property; and describe accessibility of property and of any mine workings.

(b) Name the shipping and supply points and state the distances to the property.

### 5. Exploration Work:

(a) Describe fully the proposed exploration work giving individual footages and sizes of openings for each item of work. Use narrative,

maps, plans, and sections as necessary. Show location of the proposed work as related to geologic features such as veins, ore-bearing beds, contacts of rock formations, etc. Show on maps also the relation of the proposed work to any existing mine workings and to claim boundaries or to the closest identifiable corner.

(b) If an access road must be built, show the proposed location on the property map and state the length, type and construction methods proposed.

(c) If an OME contract is executed, state how soon thereafter work would be started and finished. State your anticipated average daily or monthly rate of progress for each type of work.

### 6. Experience:

State your operating experience and background to conduct this exploration work and also that of the person who will supervise the work.

### 7. Estimate of Costs:

Furnish detailed estimates of the necessary costs for time and materials for each item of the work proposed in 5(a) under the headings listed below with a total for each heading and the estimated total cost of the work. Costs for any work to be performed by an independent contractor should be listed separately under category (a) below. Costs for any work that is not to be performed by an independent contractor should be listed under categories (b) through (g).

(a) Independent contracts. State the total cost of any proposed independent contract for all or any part of the work, and the number of units and the unit cost for each type of work, such as per foot of drilling, per foot of drifting, per hour of bulldozer operations, or per cubic yard of material moved. Cost estimates should be supported by bids from three contractors if possible. (Note—If none of the work is to be contracted, write "none" after this item.)

(b) Personal services. The cost of supervision, engineering and geological services, outside consultants, and labor should be itemized by numbers and classes of employees; rates of wages, salaries or fees; and periods of employment. State whether these services are available.

(c) Operating materials and supplies. List items of material and supplies giving quantity and price of each. Include under this heading power, water, and fuel, and units of equipment and tools costing less than \$50 each.

(d) Operating equipment. List items of equipment and tools costing \$50 or more per unit. Give specifications and indicate how each item is to be acquired—i. e., rented, purchased or provided by the applicant. If rented or purchased, state the estimated rental or purchase price and mobilization charge. If furnished by the applicant, state condition and present fair market value.

(e) Initial rehabilitation and repairs. Describe the type and the cost of initial rehabilitation or repair of existing buildings, fixtures, installations (exclusive of mine workings), and movable operating equipment now owned by the applicant which will be used in the exploration work.

(f) New buildings, fixtures, installations. Describe each building, fixed improvement, and installation to be purchased, constructed or installed for the exploration work, stating specifications and cost including labor, and materials.

(g) Miscellaneous. Describe the type and estimate the cost of repairs and maintenance of the operating equipment listed in 7(d). Do not repeat initial repairs listed in 7(e). Show also the costs of analytical work, accounting, workmen's compensation and employees' liability insurance, payroll taxes, and other required costs that do not fall within the previous categories. [Note—The Government will not contribute to costs incurred before the date of the contract or to costs of or incident to (1) acquiring, using, or possessing land and any existing improvements, facilities, buildings, installations, and appurtenances, or the depreciation and depletion thereof; (2) general overhead, corporate management, interest and taxes (other than payroll and sales taxes); (3) insurance (other than employees' liability insurance); and (4) damages to persons or property (other than authorized repair to or replacement of equipment or other property used in the work).]

UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
OFFICE OF MINERALS EXPLORATION

EXPLORATION CONTRACT  
(Short Form)

<u>Docket No.</u>	<u>Commodity</u>	<u>Contract No.</u>	<u>County</u>	<u>State</u>
OME		14-23-090-		

It is agreed \_\_\_\_\_, between the United States of America, acting through the  
(Date)  
Department of the Interior, Office of Minerals Exploration, hereinafter called the "Government," and

whose mailing address is \_\_\_\_\_,  
hereinafter called the "Operator," as follows:

ARTICLE 1. Authority and scope.--(a) This contract, entered into under the authority of Public Law 701, 85th Cong., 2d sess. (72 Stat. 700; 30 U.S.C. § 641 - 646), consists of this form, the attached Annex I (land description), Exhibit A (work and costs), and the maps and documents listed. The work is a search for new or unexplored deposits of the commodity designated above. The Operator shall begin the work on or before \_\_\_\_\_, and, subject to the provisions of Article 7 (Date) and Exhibit A, shall complete the work within \_\_\_\_\_ months from the date of the contract.

(b) The description of the work and the fixed cost for each unit of work to be performed (per foot of drilling, per foot of drifting, per hour of operations, etc.) are hereby agreed upon as specified in Exhibit A. The estimated total cost of the work is \$ \_\_\_\_\_. The Government will contribute 50 percent of the total fixed unit costs of the work performed, not in excess of \$ \_\_\_\_\_ in accordance with the provisions of Articles 4 and 5.

(c) Interest computation.-- Simple interest at the rate of \_\_\_\_\_ percent shall accrue from the dates Federal funds are made available until the period specified for payment of royalty expires, or until the amount of Federal funds contributed is fully repaid with interest.

(d) The Operator shall not transfer or assign this contract or any right or obligation thereunder without the written consent of the Government.

ARTICLE 2. Operator's rights in land.--(a) The Operator represents and undertakes that Annex I correctly describes the land which is the subject of this contract and the nature of the Operator's right of property and possession therein (whether as owner, lessee, or otherwise), and that such right, title, or interest is subject only to the following claims, liens, or encumbrances:

(b) The Subordination Agreement of the holder of any claim, lien, or encumbrance listed above and (if the Operator does not hold the legal title) the Lien Agreement of any holder of the legal title of the land (lessor, seller, optionor, etc.) are attached as follows:

(c) The Operator shall preserve and maintain his right, title, or interest in the land and his right to the possession thereof for the purposes of this contract, and shall devote the land and all existing improvements, facilities, buildings, installations, and appurtenances to the purposes of this contract. The Operator shall neither transfer, convey, nor surrender the land nor any right, title, or interest therein, nor permit nor suffer any claim, lien, or encumbrance thereon, without expressly referring to and providing in the instrument of conveyance, lien, or encumbrance for the preservation of the Government's right to a royalty on production and liens for the payment thereof. Two true copies of such instrument shall be furnished to the Government. If the Government's rights to royalty as provided in Article 6 have been terminated, the provisions of this paragraph (c) shall become inapplicable.

ARTICLE 3. Performance of the work.--(a) Operator's responsibility.--The work shall be performed diligently, efficiently, in a workmanlike manner in accordance with good mining standards, and in compliance with State laws governing health, safety, and liability insurance covering employment. The Operator shall provide suitable and adequate equipment, facilities, materials, supplies, and labor to complete the work as specified in Article 1(a).

(b) Government may inspect.--The Operator shall consult with and inform the Government on all phases of the work as it progresses. The Government may enter at all reasonable times to inspect the work under the contract and production operations during the period that royalty is payable to the Government. The Operator shall provide the Government with all reasonable means of access for such inspections.

ARTICLE 4. Contribution by the Government.--The Government will make its contribution on the basis of the monthly vouchers referred to in Article 5(b), but all payments by the Government are provisional only, subject to audit. Until the account between the Operator and the Government is finally audited and settled and the Operator's final report has been received, the Government may withhold such sums as are necessary to protect its interests. To the extent that amounts in excess of fixed unit costs or in excess of the estimated total cost may be necessary for the performance of the work, the Operator shall incur and pay such amounts for his own account without contribution by the Government. The Government will not contribute to the cost of any work performed prior to the date of this contract. The Government may make payments for the account of the Operator directly to independent contractors and suppliers rather than to the Operator.

ARTICLE 5. Reports, accounts, audits.--(a) Operator's records.--The Operator shall keep suitable records and accounts of the units of work performed and of any production in which the Government may have an interest; and shall preserve those with respect to work performed for at least three years after final payment by the Government, and those with respect to production for at least three years after any obligation to pay royalties to the Government has terminated. The Government may inspect and audit said records and accounts at any time, either by itself or by a certified public accountant. The Comptroller General of the United States or his representative, until the expiration of said three-year periods, shall have access to and the right to examine all pertinent books, documents, papers, and records of the Operator.

(b) Monthly reports.--The Operator shall provide the Government with four copies of monthly reports in three sections as follows:

- (1) Operator's Monthly Voucher claiming costs for work performed;
- (2) Operator's Progress Report showing the number of units of the various types of work performed;

and

- (3) a narrative report of the work performed during the reporting period, including adequate engineering-geological maps or sketches, drill hole logs and locations, and assay reports on samples taken concurrently with advance in mineralized ground.

(Forms for reporting under (1) and (2) above will be provided by the Government.)

(c) Final report.--Upon completion of the work or termination of the Government's obligation to contribute to costs, the Operator shall furnish the Government with three copies of a final report (in addition to the final monthly report). This final report shall include a geological and engineering evaluation of the results of the work performed under the contract with an estimate of the ore reserves resulting from such work, complete assay data, adequate geological and engineering maps or sketches, and a summary of the work performed and the unit costs thereof.

(d) Report of sales.--The Operator shall provide the Government with suitable accounting and documentary evidence showing all production to which the Government's royalty relates, such as two copies of smelter or concentrator settlement sheets and certified accounts of production and sale or other disposition of production.

(e) Compliance with requirements.--If the Government determines that any of the Operator's reports, records, or accounts are insufficient or incomplete or if the Operator fails to make them, the Government may procure the preparation or completion of same with suitable attachments as an expense of the work to which the Operator shall contribute. The Government may withhold approval and payment of any vouchers relating to insufficient or incomplete reports, records, or accounts.

ARTICLE 6. Repayment by Operator.--(a) Certification.--If the Government considers that mineral or metal production from the land covered by the contract may be possible as a result of the exploration work, it shall so certify in writing to the Operator at any time not later than six months after a sufficient final report and final accounting (see Article 5) have been furnished.

(b) Royalty on production.--The Operator, whether or not the producer (for example, if the Operator either transfers or does not retain his interest in the land), shall pay to the Government a royalty on all minerals and metals mined or produced from the land as follows:

(1) irrespective of any certification of possible production--from the date of the contract until the lapse of the time within which the Government may issue such certification or until the total net amount contributed by the Government is fully repaid with interest, whichever occurs first; or

(2) if the Government issues a certification of possible production--for a period of ten years from the date of the contract or until the total net amount contributed by the Government is fully repaid with interest, whichever occurs first.

(c) Payment of royalty.--(1) The Government's royalty shall be five percent of the gross proceeds (including any bonuses, premiums, allowances, or other benefits) from the production sold, in the form sold (ore, concentrate, metal, or equivalent), at the point of delivery (the f.o.b. point); except, that charges of the buyer arising in the regular course of business and shown as deductions on the buyer's settlement sheets (such as treatment processes performed by the buyer, sampling and assaying to determine the value of the production sold, and freight payable by the buyer to a carrier (not the Operator or producer)), shall be allowed as deductions in arriving at the "gross proceeds" as that term is used herein. No costs of the Operator or producer are deductible in arriving at the "gross proceeds" as that term is here used.

The term "treatment processes" means those processes (such as milling, concentrating, smelting, refining, or equivalent, but excluding fabricating or manufacturing) applied to the crude ore or other production after it is extracted from the ground to put it into a commercially marketable form.

(2) The Government's royalty shall be computed and paid currently upon each lot sold, held, or used in integrated operations, as the case may be.

(d) Unsold production.--If any production (ore, concentrate, metal, or equivalent), after the lapse of six months from the date the ore was extracted from the ground, remains neither sold nor used in integrated manufacturing or fabricating operations (for instance if it is stockpiled), the Government, at its option, as long as it so remains, may require the computation and payment of its royalty on the value of such production in the form (ore, concentrate, metal, or equivalent) it is in when the Government elects to require computation and payment. If any production is used in integrated manufacturing or fabricating operations before the Government makes its election, the Government's royalty on such production shall be computed on the value thereof in the form in which and at the time it is so used. "Value" as here used means what is or would be gross income from mining operations for percentage depletion purposes in Federal income tax determination, or the market value, whichever is greater.

(e) Lien for payment.--To secure the payment of royalty (see Article 6(b)), the Operator hereby grants to the Government a lien upon his interest in the land and upon any production of minerals and metals therefrom until the royalty claim is extinguished by lapse of time or is fully paid.

(f) Notice to purchasers.--The Operator or producer shall give notice of the Government's claim for royalty to any purchaser of the production, and shall authorize and direct such purchaser to pay the royalty directly to the Government and to furnish the Government with copies of the settlement sheets. If the records of any production and sales or other disposition of production, whether the production is by the Operator or by others, are not made available to the Government, the amount of the royalty may be estimated by the Government, and this estimate shall be final and binding upon the Operator or producer.

(g) No obligation to produce.--Nothing in this contract shall be construed as imposing any obligation on the Operator or the Operator's successor in interest to engage in any production operations.

(h) Government not obligated to buy.--Nothing in this contract shall be construed as imposing any obligation on the Government to purchase any minerals and metals mined or produced from the land.

ARTICLE 7. Termination of the Government's Obligations.--(a) If the Government determines that operations at any time have failed to achieve anticipated results and further work is not justified, the Government may give the Operator written notice thereof, and thereupon:

(1) the Government shall be free of all obligation to pay on account of units of work not then performed; and

(2) the Operator shall be free of all obligation to prosecute the work other than such as may be necessary and incidental to final accounting and reporting.

(b) If the Government determines that the Operator is in default under the terms of the contract, the Government may give the Operator written notice of such default with a specification of reasonable time within which the default must be cured; and if the Operator fails to cure such default as required, thereupon:

(1) the Government shall be relieved of all obligation to pay on account of units of work not performed when the notice was given, and

(2) the Operator shall be free of all obligation to prosecute the work other than such as may be necessary and incidental to final accounting and reporting.

The Government may also avail itself of any other remedy the law may provide for breach of contract, including the right to rescind the contract and to demand repayment of all moneys contributed by the Government under the contract.

(c) The giving of any notice by the Government under the provisions of this Article 7 shall not affect the Government's rights as provided for in the contract with respect to royalty and liens to secure the payment thereof, and such rights shall be fully preserved.

(d) The determinations of the Government are subject to appeal under Article 11.

ARTICLE 8. Notices to be given by the Government may be delivered to the Operator or may be sent by certified mail addressed to the Operator at his mailing address stated in this contract. If mailed, notices are deemed to have been delivered five days after the date of mailing.

ARTICLE 9. Officials not to benefit.--No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 10. Nondiscrimination in Employment.--The provisions respecting nondiscrimination in employment which are required by section 301 of Executive Order 10925, dated March 6, 1961, as amended and supplemented, are attached hereto as Exhibit B and are hereby incorporated in and made a part of this contract.

ARTICLE 11. Disputes.--Any dispute arising under this contract which is not disposed of by agreement shall be decided by the Director, Office of Minerals Exploration, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Operator. The decision of the Director, Office of Minerals Exploration, shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Operator mails or otherwise furnishes to the Director, Office of Minerals Exploration, a written appeal addressed to the Secretary of the Interior. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

The term "Director, Office of Minerals Exploration," as used herein includes his duly authorized representative.

ARTICLE 12. Work Hours Act of 1962 - Overtime Compensation.--This contract, to the extent that it is of a character specified in the Work Hours Act of 1962 (Public Law 87-581, 76 Stat. 357-360) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and to all other provisions and exceptions of said Work Hours Act of 1962.

(a) Overtime requirements.--No Operator or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any such calendar day or in excess of forty hours in any such workweek, as the case may be.

(b) Violations; liability for unpaid wages; liquidated damages.--In the event of any violation of the clause set forth in subparagraph (a) of this paragraph, the Operator and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Operator and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (a) of this paragraph, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (a) of this paragraph.

(c) Withholding for unpaid wages and liquidated damages.--The Office of Minerals Exploration may withhold or cause to be withheld, from any moneys payable on account of work performed by the Operator or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Operator or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) of this paragraph.

ARTICLE 13. Copeland (Anti-Kickback) Act--Nonrebate of wages.--The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR, Part 3), made pursuant to the Copeland Act, as amended (40 U. S. C. 276c) and to aid in the enforcement of the Anti-Kickback Act (18 U. S. C. 874) are made a part of this contract by reference. The Operator will comply with these regulations and any amendments or modifications thereof and will be responsible for the submission of affidavits required of independent contractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions.

ARTICLE 14. Changes and added provisions.--

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Executed in quintuplicate the day and year first above written.

THE UNITED STATES OF AMERICA

\_\_\_\_\_  
(Operator)

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

I, \_\_\_\_\_, certify that I am the  
(Name)  
\_\_\_\_\_  
secretary of the corporation named as Operator herein; that  
\_\_\_\_\_, who signed this contract on behalf of the Operator, was then  
(Name)  
\_\_\_\_\_  
of said corporation; that said contract was duly signed for  
(Title)  
and in behalf of said corporation by authority of its governing body, and is within the scope of its  
corporate powers.

\_\_\_\_\_  
[CORPORATE  
SEAL]



FOR OPERATOR'S USE

REMARKS

FOR GOVERNMENT USE

REMARKS

---

OPERATOR'S MONTHLY REPORT

The Operator, under an Office of Mineral Exploration contract, is required to report monthly to the Government. The report consists of two parts. FIRST, the Operator's Monthly Voucher on Form 9-1648 listing the project costs incurred and claimed by the Operator is the voucher basis for payment of the Government's share of the cost.

SECOND, the Operator's Narrative Report is a concise description of the work performed, results accomplished, and any unusual situations encountered, illustrated and supported by engineering-geological maps or sketches, drill hole logs, assay reports, etc., as pertinent.

The Operator submits the original and three copies of each of the two sections of this report to the OME regional Field Officer at the end of each month during the life of the contract.

---

PREPARATION OF OPERATOR'S MONTHLY VOUCHER, FORM 9-1648

In the left hand column list the items for which costs were incurred during the month, and also the items for which costs were previously reported. For items previously reported, show only UNITS TO DATE and COSTS TO DATE. Items listed should conform to Exhibit A of the contract (Estimated Costs of the Work). The total of COSTS THIS MONTH followed by the Operator's signature constitutes a claim for payment of the Government's share of the costs. The Operator or his agent must sign the certification in the lower left corner.

Except for amounts claimed under "fixed unit costs" provisions of the contract, all costs claimed in this voucher must be supported by documentary evidence consisting of: (a) certified copies or transcripts of payrolls which list each employee, wage rate, period of employment, gross earnings, and net earnings; (b) original or certified copies of invoices, statements of accounts, or purchase orders which indicate items of materials or services, quantities, unit prices, total charges, and payment terms; and (c) certified memoranda of the Operator for such items as unemployment taxes, employee's liability insurance, and depreciation of Operator-owned equipment. The certification may be stated thus, "Certified True Copy", followed by the signature of the Operator or his agent. One copy of each document should accompany the original of this voucher.

The requirement for submitting documentary evidence of claimed costs may be waived by the OME regional Field Officer if he determines that it is impracticable for an Operator to submit this material. In any case of waiver of this requirement an "on-site" audit by an OME auditor is mandatory prior to payment of the final Operator's Monthly Voucher.

S A M P L E

EXPLORATION COSTS

The costs of the exploration are based on average wage rates, supply, and equipment costs.

1. Bulldozer trenching:	
Pental of D-8, or equivalent size, bulldozer with operator and supplies, 150 hrs at \$20/hr . . . . .	\$ 3,000.00
Supervision, surveyor, panner, sampler, 4 weeks 5 days/week at \$3/hr . . . . .	480.00
Assaying, 50 samples, for mercury, at \$4/sample. . . . .	200.00
	Total . . . . \$ 3,680.00

2. Drift on vein, crosscut, and ventilation raise:	
Total 400 ft; 5-day week, advance 4 ft/day = 100 days = 4 mos. Wages: Miners \$2.50/hr; muckers \$2/hr; car men \$1.75/hr; and an average of 4 ft per shift . \$12.00/ft	
Insurance, social security tax, etc. at 18% . . . . .	2.25 "
Powder, fuse, detonators . . . . .	3.00 "
Compressor supplies . . . . .	3.00 "
Steel and bits . . . . .	2.00 "
Repairs . . . . .	1.50 "
Rail, air, and water lines . . . . .	2.50 "
Supervision, engineering, accounting, 4 mos at \$6/mo . . . . .	6.00 "
Rental as below* . . . . .	1.05 "
	Total . . . \$33.80/ft

\*The operator will furnish all equipment.

Compressor . . . . .	\$2,350.00
Drill: Jackleg . . . . .	900.00
Air, water hoses . . . . .	400.00
Water pressure tank . . . . .	50.00
Mine cars (2) . . . . .	300.00
Truck, 4-wheel drive . . . . .	1,000.00
Tools . . . . .	300.00
Slusher . . . . .	1,000.00
	Total \$6,300.00

Monthly rental =  $\frac{\$6,300}{60}$  = \$1.05. Rental for 4 mos (4x\$105=\$420=\$1.05/ft).

Total cost of the project:

150 hrs of bulldozer trenching . . . . .	\$ 3,480.00
400 ft of drift, raise, and crosscuts at \$33.80/ft . . . . .	13,520.00
	Total . \$17,000.00

OPERATOR'S FINAL REPORT

1. OME No. \_\_\_\_\_ (metals or minerals)  
Contract No. \_\_\_\_\_  
Name of Operator \_\_\_\_\_  
Name and location of property \_\_\_\_\_

2. Summary of Project.

Give approximate dates of starting and completing the exploration work, or effective date contract was terminated.

Describe the work completed, giving categories with total units and costs for each category. As an example -

1,000 ft. diamond drilling	\$ 2,750.00
500 ft. drifting	<u>17,500.00</u>
	\$20,250.00

3. Describe the geologic features of the project. Include maps, assay data, estimate of ore reserves found, and production (quantity and value) during project.
4. Comment on progress made, unusual circumstances, operating conditions, efficiency of operations, results obtained from the project, and plans for future operations.

# Alaska State Legislature

SPECIAL COMMITTEE ON  
THE ALASKA PERMANENT FUND  
(907) 276-3433

528 W. 5TH, SUITE 270  
ANCHORAGE, AK. 99501  
[POUCH V, JUNEAU, AK. 99811]  
(907) ~~XXXXXX~~  
465-4955



## MEMBERS

REP. CLARK GRUENING, CHMN.  
REP. TERRY GARDINER, V. CHMN.  
REP. E. J. HAUGEN  
REP. RUSS MEEKINS  
REP. BILL MILES  
REP. LEO SCHAEFFER  
~~REP. RICK LINDEN~~  
Rep. Joe Hayes

## House of Representatives

February 28, 1978

Mr. R. D. Stevenson  
Special Assistant  
Office of the Commissioner  
Department of Revenue  
Pouch S  
Juneau, Alaska 99811

Dear Mr. Stevenson:

Thank you for the Fiscal Notes on HB 595, HB 596 and HB 682 prepared by Deputy Commissioner Edenso and recently received by the Committee.

CSHB 596 will be before the Finance Committee March 6, 1978 at 1:15 PM and it would be helpful to note the differences, if any, in your calculations for the Committee Substitute at that time.

It would also be helpful if you would provide a more detailed back up on the calculations for CSHB 596 so that it will be possible to see what assumptions were made and how the figures were arrived at.

I will also be forwarding a Committee Substitute for HB 682 for your review and subsequent Fiscal Note in the near future.

Again, thank you for your time and effort and feel free to contact me if I can be of further assistance.

Cordially,

Representative Clark Gruening

cc: Deputy Commissioner Edenso

CG/jl

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5 - JUNEAU 99811

JAY S. HAMMOND, GOVERNOR

February 25, 1978

The Honorable Clark Gruening  
 Chairman  
 House Special Committee on the  
 Permanent Fund  
 Alaska State Legislature  
 State Capitol Building - Room 121  
 Juneau, Alaska

Re: House Bill No. 682

Dear Mr. Gruening:

House Bill No. 682, an Act relating to nonrenewable resource revenues, was introduced in the House on January 25, 1978 and was referred to the House Special Committee on the Permanent Fund and the House Finance Committee.

For the consideration of the House Special Committee on the Permanent Fund, I am enclosing a copy of a Fiscal Note prepared by Mr. Jim Edenso, Deputy Commissioner, Department of Revenue concerning the proposed legislation.

Very truly yours,



R. D. Stevenson  
 Special Assistant

Enclosure

cc: The Honorable Steve Cowper  
 Chairman  
 House Finance Committee  
 Alaska State Legislature  
 State Capitol Building  
 Juneau, Alaska

Jim Edenso, Deputy Commissioner  
 Department of Revenue

John Messenger, Deputy Commissioner  
 Department of Revenue

cc - Gruening & Cowper  
 and W. 2-27  
 file 682

**Public Law 95-87**  
**95th Congress**

**An Act**

To provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

Aug. 3, 1977

[H.R. 2]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Surface Mining Control and Reclamation Act of 1977".

Surface Mining  
 Control and  
 Reclamation Act  
 of 1977.  
 30 USC 1201  
 note.

**TABLE OF CONTENTS**

**TITLE I—STATEMENT OF FINDINGS AND POLICY**

- Sec. 101. Findings.
- Sec. 102. Purposes.

**TITLE II—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**

- Sec. 201. Creation of the Office.

**TITLE III—STATE MINING AND MINERAL RESOURCES AND RESEARCH INSTITUTES**

- Sec. 301. Authorization of State allotments to institutes.
- Sec. 302. Research funds to institutes.
- Sec. 303. Funding criteria.
- Sec. 304. Duties of the Secretary.
- Sec. 305. Autonomy.
- Sec. 306. Miscellaneous provisions.
- Sec. 307. Center for cataloging.
- Sec. 308. Interagency cooperation.
- Sec. 309. Advisory committee.

**TITLE IV—ABANDONED MINE RECLAMATION**

- Sec. 401. Abandoned Mine Reclamation Fund and purposes.
- Sec. 402. Reclamation fee.
- Sec. 403. Objectives of fund.
- Sec. 404. Eligible lands and water.
- Sec. 405. State reclamation programs.
- Sec. 406. Reclamation of rural lands.
- Sec. 407. Acquisition and reclamation of land adversely affected by past coal mining practices.
- Sec. 408. Liens.
- Sec. 409. Filling voids and sealing tunnels.
- Sec. 410. Emergency powers.
- Sec. 411. Fund report.
- Sec. 412. Miscellaneous powers.
- Sec. 413. Interagency cooperation.

**TITLE V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING**

- Sec. 501. Environmental protection standards.
- Sec. 502. Initial regulatory procedures.
- Sec. 503. State programs.
- Sec. 504. Federal programs.

**TITLE V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE  
COAL MINING—Continued**

- Sec. 505. State laws.
- Sec. 506. Permits.
- Sec. 507. Application requirements.
- Sec. 508. Reclamation plan requirements.
- Sec. 509. Performance bonds.
- Sec. 510. Permit approval or denial.
- Sec. 511. Revision of permits.
- Sec. 512. Coal exploration and permits.
- Sec. 513. Public notice and public hearings.
- Sec. 514. Decisions of regulatory authority and appeals.
- Sec. 515. Environmental protection performance standards.
- Sec. 516. Surface effects of underground coal mining operations.
- Sec. 517. Inspections and monitoring.
- Sec. 518. Penalties.
- Sec. 519. Release of performance bonds or deposits.
- Sec. 520. Citizen suits.
- Sec. 521. Enforcement.
- Sec. 522. Designating areas unsuitable for surface coal mining.
- Sec. 523. Federal lands.
- Sec. 524. Public agencies, public utilities, and public corporations.
- Sec. 525. Review by Secretary.
- Sec. 526. Judicial review.
- Sec. 527. Special bituminous coal mines.
- Sec. 528. Surface mining operations not subject to this Act.
- Sec. 529. Anthracite coal mines.

**TITLE VI—DESIGNATION OF LANDS UNSUITABLE FOR  
NONCOAL MINING**

- Sec. 601. Designation procedures.

**TITLE VII—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**

- Sec. 701. Definitions.
- Sec. 702. Other Federal laws.
- Sec. 703. Employee protection.
- Sec. 704. Protection of Government employees.
- Sec. 705. Grants to the States.
- Sec. 706. Annual report.
- Sec. 707. Severability.
- Sec. 708. Alaskan surface coal mine study.
- Sec. 709. Study of reclamation standards for surface mining of other minerals.
- Sec. 710. Indian lands.
- Sec. 711. Experimental practices.
- Sec. 712. Authorization of appropriations.
- Sec. 713. Coordination of regulatory and inspection activities.
- Sec. 714. Surface owner protection.
- Sec. 715. Federal lessee protection.
- Sec. 716. Alaska coal.
- Sec. 717. Water rights and replacement.
- Sec. 718. Advance appropriations.
- Sec. 719. Certification and training of blasters.

**TITLE VIII—UNIVERSITY COAL RESEARCH LABORATORIES**

- Sec. 801. Establishment of university coal research laboratories.
- Sec. 802. Financial assistance.
- Sec. 803. Limitation of payments.
- Sec. 804. Payments.
- Sec. 805. Advisory Council on Coal Research.
- Sec. 806. Authorization of appropriations.

## TITLE IX—ENERGY RESOURCE GRADUATE FELLOWSHIPS

- Sec. 901. Program authorized.  
Sec. 902. Awarding of fellowships.  
Sec. 903. Distribution of fellowships.  
Sec. 904. Stipends and institutions of higher education allowances.  
Sec. 905. Limitation.  
Sec. 906. Fellowship conditions.  
Sec. 907. Appropriations authorized.  
Sec. 908. Research and demonstration projects of alternative coal mining technologies.

## TITLE I—STATEMENT OF FINDINGS AND POLICY

## FINDINGS

Sec. 101. The Congress finds and declares that—

30 USC 1201.

(a) extraction of coal and other minerals from the earth can be accomplished by various methods of mining, including surface mining;

(b) coal mining operations presently contribute significantly to the Nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of the Nation's coal reserves can only be extracted by underground mining methods, and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry;

(c) many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources;

(d) the expansion of coal mining to meet the Nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.

(e) surface mining and reclamation technology are now developed so that effective and reasonable regulation of surface coal mining operations by the States and by the Federal Government in accordance with the requirements of this Act is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of such mining operations;

(f) because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States;

(g) surface mining and reclamation standards are essential in order to insure that competition in interstate commerce among sellers of coal produced in different States will not be used to

undermine the ability of the several States to improve and maintain adequate standards on coal mining operations within their borders;

(h) there are a substantial number of acres of land throughout major regions of the United States disturbed by surface and underground coal on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality;

(i) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to serve as a basis for effective and reasonable regulation of such operations;

(j) surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner; and

(k) the cooperative effort established by this Act is necessary to prevent or mitigate adverse environmental effects of present and future surface coal mining operations.

#### PURPOSES

30 USC 1202.

SEC. 102. It is the purpose of this Act to—

(a) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations;

(b) assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations;

(c) assure that surface mining operations are not conducted where reclamation as required by this Act is not feasible;

(d) assure that surface coal mining operations are so conducted as to protect the environment;

(e) assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(f) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy;

(g) assist the States in developing and implementing a program to achieve the purposes of this Act;

(h) promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this Act and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public;

(i) assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act;

(j) provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining operations for other minerals;

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2

256 SCOMM 9: HOUSE SPEC. COMM. ON PERMANENT FUND 1977-78

...age the full utilization of coal resources through  
...ent and application of underground extraction

...ite, sponsor, provide for and/or supplement present  
...the conduct of research investigations, experiments,  
...ations, in the exploration, extraction, processing,  
...and production of minerals and the training of  
...neers and scientists in the field of mining, minerals  
...d technology, and the establishment of an appro-  
...ch and training center in various States; and  
...ver necessary, exercise the full reach of Federal con-  
...owers to insure the protection of the public interest  
...tive control of surface coal mining operations.

## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

### CREATION OF THE OFFICE

...ere is established in the Department of the Interior,  
...ace Mining Reclamation and Enforcement (herein-  
...s the "Office").

...shall have a Director who shall be appointed by the  
...with the advice and consent of the Senate, and shall  
...t the rate provided for level IV of the Executive  
...ction 5315 of the United States Code, and such other  
...r be required. Pursuant to section 5108, title 5, and  
...t with the Secretary, a majority of members of the  
...nmission shall determine the necessary number of  
...ral schedule employees in grade 16, 17, and 18 to  
...s of this title and shall allocate such positions to the  
...rector shall have the responsibilities provided under  
...his section and those duties and responsibilities relat-  
...ns of the Office which the Secretary may assign, con-  
...act. Employees of the Office shall be recruited on the  
...fessional competence and capacity to administer the  
...s Act. The Office may use, on a reimbursable basis  
...e, employees of the Department and other Federal  
...nister the provisions of this Act, providing that no  
...rogram, or function in any Federal agency which  
...promoting the development or use of coal or other  
...or regulating the health and safety of miners under  
...Federal Coal Mine Health and Safety Act of 1969  
...ll be transferred to the Office.

...ry, acting through the Office, shall—

...ster the programs for controlling surface coal min-  
...s which are required by this Act; review and approve  
...State programs for controlling surface coal mining  
...d reclaiming abandoned mined lands; make those  
...s and inspections necessary to insure compliance with  
...duct hearings, administer oaths, issue subpoenas, and  
...tendance of witnesses and production of written or  
...ial as provided for in this Act; issue cease-and-desist  
...w and vacate or modify or approve orders and deci-  
...ler the suspension, revocation, or withholding of any  
...ilure to comply with any of the provisions of this  
...les and regulations adopted pursuant thereto;

Establishment.  
30 USC 1211.

Director.

5 USC 5315.

5 USC 5332 note.

30 USC 801 note.

Rules and  
regulations.

(2) publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act;

(3) administer the State grant-in-aid program for the development of State programs for surface and mining and reclamation operations provided for in title V of this Act;

(4) administer the program for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to title IV of this Act;

(5) administer the surface mining and reclamation research and demonstration project authority provided for in this Act;

(6) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations and assist States, local governments, and other eligible agencies in the coordination of such programs;

(7) maintain a continuing study of surface mining and reclamation operations in the United States;

(8) develop and maintain an Information and Data Center on Surface Coal Mining, Reclamation, and Surface Impacts of Underground Mining, which will make such data available to the public and the Federal, regional, State, and local agencies conducting or concerned with land use planning and agencies concerned with surface and underground mining and reclamation operations;

(9) assist the States in the development of State programs for surface coal mining and reclamation operations which meet the requirements of the Act, and at the same time, reflect local requirements and local environmental and agricultural conditions;

(10) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all or certain types of surface coal mining pursuant to section 522;

(11) monitor all Federal and State research programs dealing with coal extraction and use and recommend to Congress the research and demonstration projects and necessary changes in public policy which are designated to (A) improve feasibility of underground coal mining, and (B) improve surface mining and reclamation techniques directed at eliminating adverse environmental and social impacts;

(12) cooperate with other Federal agencies and State regulatory authorities to minimize duplication of inspections, enforcement, and administration of this Act; and

(13) perform such other duties as may be provided by law and relate to the purposes of this Act.

Post, p. 507.

Publication in  
Federal Register.  
30 USC 801 note.

(d) The Director shall not use either permanently or temporarily any person charged with responsibility of inspecting coal mines under the Federal Coal Mine Health and Safety Act of 1969, unless he finds and publishes such finding in the Federal Register, that such activities would not interfere with such inspections under the 1969 Act.

(e) The Office shall be considered an independent Federal regulatory agency for the purposes of sections 3502 and 3512 of title 44 of the United States Code.

Conflict of  
interest.

(f) No employee of the Office or any other Federal employee performing any function or duty under this Act shall have a direct or indirect financial interest in underground or surface coal mining operations. Whoever knowingly violates the provisions of the above sentence shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment for not more than one year, or both.

Penalties.

The Director shall (1) within sixty days after enactment of this Act publish regulations, in accordance with section 553 of title 5, United States Code, to establish the methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning their financial interests which may be affected by this subsection, and (2) report to the Congress as part of the annual report (section 706) on the actions taken and not taken during the preceding calendar year under this subsection.

(g) (1) After the Secretary has adopted the regulations required by section 501 of this Act, any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of a rule under this Act.

(2) Such petitions shall be filed in the principal office of the Director and shall set forth the facts which it is claimed established that it is necessary to issue, amend, or repeal a rule under this Act.

(3) The Director may hold a public hearing or may conduct such investigation or proceeding as the Director deems appropriate in order to determine whether or not such petition should be granted.

(4) Within ninety days after filing of a petition described in paragraph (1), the Director shall either grant or deny the petition. If the Director grants such petition, the Director shall promptly commence an appropriate proceeding in accordance with the provisions of this Act. If the Director denies such petition, the Director shall so notify the petitioner in writing setting forth the reasons for such denial.

### TITLE III—STATE MINING AND MINERAL RESOURCES AND RESEARCH INSTITUTES

#### AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

SEC. 301. (a) There are authorized to be appropriated to the Secretary of the Interior sums adequate to provide for each participating State \$200,000 for fiscal year 1978, \$300,000 for fiscal year 1979, and \$400,000 for each fiscal year thereafter for five years, to assist the States in carrying on the work of a competent and qualified mining and mineral resources research institute, or center (hereinafter referred to as "institute") at one public college or university in the State which has in existence at the time of enactment of this title a school of mines, or division, or department conducting a program of substantial instruction and research in mining or minerals extraction or which establishes such a school of mines, or division, or department subsequent to the enactment of this title and which school of mines, or division or department shall have been in existence for at least two years. The Advisory Committee on Mining and Minerals Resources Research as created by this title shall determine a college or university to have an eligible school of mines, or division or department conducting a program of substantial instruction and research in mining or minerals extraction wherein education and research in the minerals engineering fields are being carried out and wherein at least four full-time permanent faculty members are employed: *Provided*, That—

Regulations.

Report to  
Congress.  
Post, p. 521.

Petition.

Filing.

Hearing or  
investigation.

Notification.

30 USC 1221.

(1) such moneys when appropriated shall be made available to match, on a dollar-for-dollar basis, non-Federal funds which shall be at least equal to the Federal share to support the institute;

(2) if there is more than one such eligible college or university in a State, funds under this title shall, in the absence of a designation to the contrary by act of the legislature of the State, be paid

to one such college or university designated by the Governor of the State; and

(3) where a State does not have a public college or university with an eligible school of mines, or division, or department conducting a program of substantial instruction and research in mining or mineral extraction, said advisory committee may allocate the State's allotment to one private college or university which it determines to have an eligible school of mines, or division, or department as provided herein.

(b) It shall be the duty of each such institute to plan and conduct and/or arrange for a component or components of the college or university with which it is affiliated to conduct competent research, investigations, demonstrations, and experiments of either a basic or practical nature, or both, in relation to mining and mineral resources and to provide for the training of mineral engineers and scientists through such research, investigations, demonstrations, and experiments. Such research, investigations, demonstrations, experiments, and training may include, without being limited; exploration; extraction; processing; a d development; production of mineral resources; mining and mineral technology; supply and demand for minerals; conservation and best use of available supplies of minerals; the economic, legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources, and mineral reclamation, having due regard to the interrelation on the natural environment, the varying conditions and needs of the respective States, and to mining and mineral resources research projects being conducted by agencies of the Federal and State governments, and other institutes.

#### RESEARCH FUNDS TO INSTITUTES

Sec. 302. (a) There is authorized to be appropriated annually for seven years to the Secretary of the Interior the sum of \$15,000,000 in fiscal year 1978, said sum increased by \$2,000,000 each fiscal year thereafter for six years, which shall remain available until expended. Such moneys when appropriated shall be made available to institutes to meet the necessary expenses for purposes of:

(1) specific mineral research and demonstration projects of industrywide application, which could not otherwise be undertaken, including the expenses of planning and coordinating regional mining and mineral resources research projects by two or more institutes, and

(2) research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior, which may be deemed desirable and are not otherwise being studied.

(b) Each application for a grant pursuant to subsection (a) of this section shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the estimated costs, the importance of the project to the Nation, region, or State concerned, and its relation to other known research projects theretofore pursued or being pursued, and the extent to which it will provide opportunity for the training of mining and mineral engineers and scientists, and the extent of participation by nongovernmental sources in the project.

(c) The Secretary shall, insofar as it is practicable, utilize the facilities of institutes designated in section 301 of this title to perform such special research, authorized by this section, and shall select the

Appropriation  
authorization.  
30 USC 1222.

Application,  
contents.

institutes for the performance of such special research on the basis of the qualifications without regard to race or sex of the personnel who will conduct and direct it, and on the basis of the facilities available in relation to the particular needs of the research project, special geographic, geologic, or climatic conditions within the immediate vicinity of the institute in relation to any special requirements of the research project, and the extent to which it will provide opportunity for training individuals as mineral engineers and scientists. The Secretary may designate and utilize such portions of the funds authorized to be appropriated by this section as he deems appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

(d) No grant shall be made under subsection (a) of this section except for a project approved by the Secretary of the Interior and all grants shall be made upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mineral engineers and scientists.

(e) No portion of any grant under this section shall be applied to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building.

#### FUNDING CRITERIA

SEC. 303. (a) Sums available to institutes under the terms of sections 301 and 302 of this title shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. Each institute shall set forth its plan to provide for the training of individuals as mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields; set forth policies and procedures which assure that Federal funds made available under this title for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this title, and in no case supplant such funds; have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this title and shall make an annual report to the Secretary on or before the first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this title during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary. If any of the moneys received by the authorized receiving officer of any institute under the provisions of this title shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, it shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State.

(b) Moneys appropriated pursuant to this title shall be available for expenses for research, investigations, experiments, and training conducted under authority of this title. The institutes are hereby authorized and encouraged to plan and conduct programs under this title in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved, and moneys appropriated pursuant to this title shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research.

Payment.  
30 USC 1223.

Plan.

Annual report to  
Secretary of the  
Interior.

## DUTIES OF THE SECRETARY

Consultation.  
Rules and  
regulations.  
30 USC 1224.

SEC. 304. (a) The Secretary of the Interior is hereby charged with the responsibility for the proper administration of this title and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions. The Secretary shall furnish such advice and assistance as will best promote the purposes of this title, participate in coordinating research initiated under this title by the institutes, indicate to them such lines of inquiry as to him seem most important, and encourage and assist in the establishment and maintenance of cooperation by and between the institutes and between them and other research organizations, the United States Department of the Interior, and other Federal establishments.

(b) On or before the 1st day of July in each year after the passage of this title, the Secretary shall ascertain whether the requirements of section 303(a) have been met as to each institute and State.

Annual report to  
Congress.

(c) The Secretary shall make an annual report to the Congress of the receipts, expenditures, and work of the institutes in all States under the provisions of this title. The Secretary's report shall indicate whether any portion of an appropriation available for allotment to any State has been withheld and, if so, the reason therefor.

## AUTONOMY

30 USC 1225.

SEC. 305. Nothing in this title shall be construed to impair or modify the legal relationship existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this title shall in any way be construed to authorize Federal control or direction of education at any college or university.

## MISCELLANEOUS PROVISIONS

30 USC 1226.

SEC. 306. (a) The Secretary of the Interior shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with mining and mineral resources, of State and local governments, and of private institutions and individuals to assure that the programs authorized in this title will supplement and not duplicate established mining and minerals research programs, to stimulate research in otherwise neglected areas, and to contribute to a comprehensive nationwide program of mining and minerals research, having due regard for the protection and conservation of the environment. The Secretary shall make generally available information and reports on projects completed, in progress, or planned under the provisions of this title, in addition to any direct publication of information by the institutes themselves.

Information,  
availability to  
public.

(b) Nothing in this title is intended to give or shall be construed as giving the Secretary of the Interior any authority over mining and mineral resources research conducted by any agency of the Federal Government, or as repealing, superseding, or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with mining and mineral resources.

Contracts.

(c) Contracts or other arrangements for mining and mineral resources research work authorized under this title with an institute, educational institution, or nonprofit organization may be undertaken

without regard to the provisions of section 3384 of the Revised Statutes (31 U.S.C. 529) when, in the judgment of the Secretary of the Interior, advance payments of initial expense are necessary to facilitate such work: *Provided*, That authority to make payments under this subsection shall be effective only to such extent or in such amounts as are provided in advance by appropriation Acts.

(d) No research, demonstration, or experiment shall be carried out under this Act by an institute financed by grants under this Act, unless all uses, products, processes, patents, and other developments resulting therefrom, with such exception or limitation, if any, as the Secretary may find necessary in the public interest, be available promptly to the general public. Nothing contained in this section shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent. There are authorized to be appropriated such sums as are necessary for the printing and publishing of the results of activities carried out by institutes under the provisions of this Act and for administrative planning and direction, but such appropriations shall not exceed \$1,000,000 in any fiscal year: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

Research, results available to public.

Appropriation authorization.

#### CENTER FOR CATALOGING

SEC. 307. The Secretary shall establish a center for cataloging current and projected scientific research in all fields of mining and mineral resources. Each Federal agency doing mining and mineral resources research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for public use a catalog of mining and mineral resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government, colleges, universities, private institutions, firms, and individuals as may make such information available.

30 U.S.C. 1227.

#### INTERAGENCY COOPERATION

SEC. 308. The President shall, by such means as he deems appropriate, clarify agency responsibility for Federal mining and mineral resources research and provide for interagency coordination of such research, including the research authorized by this title. Such coordination shall include—

30 USC 1228.

- (a) continuing review of the adequacy of the Government-wide program in mining and mineral resources research;
- (b) identification and elimination of duplication and overlap between two or more agency programs;
- (c) identification of technical needs in various mining and mineral resources research categories;
- (d) recommendations with respect to allocation of technical effort among Federal agencies;
- (e) review of technical manpower needs and findings concerning management policies to improve the quality of the Government-wide research effort; and
- (f) actions to facilitate interagency communication at management levels.

#### ADVISORY COMMITTEE

SEC. 309. (a) The Secretary of the Interior shall appoint an Advisory Committee on Mining and Mineral Research composed of—

Advisory Committee on Mining and Mineral Research, appointment.  
30 USC 1229.

(1) the Director, Bureau of Mines, or his delegate, with his consent;

(2) the Director of the National Science Foundation, or his delegate, with his consent;

(3) the President, National Academy of Sciences, or his delegate, with his consent;

(4) the President, National Academy of Engineering, or his delegate, with his consent;

(5) the Director, United States Geological Survey, or his delegate, with his consent; and

(6) not more than four other persons who are knowledgeable in the fields of mining and mineral resources research, at least one of whom shall be a representative of working coal miners.

Chairman.  
Consultation and  
recommendations.

(b) The Secretary shall designate the Chairman of the Advisory Committee. The Advisory Committee shall consult with, and make recommendations to, the Secretary of the Interior on all matters involving or relating to mining and mineral resources research and such determinations as provided in this title. The Secretary of the Interior shall consult with, and consider recommendations of such Committee in the conduct of mining and mineral resources research and the making of any grant under this title.

Compensation  
and travel  
expenses.

(c) Advisory Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the Secretary but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, United States Code, be fully reimbursed for travel, subsistence, and related expenses.

5 USC 5332 note.

## TITLE IV—ABANDONED MINE RECLAMATION

### ABANDONED MINE RECLAMATION FUND AND PURPOSES

Federal and State  
abandoned mine  
reclamation  
funds.  
30 USC 1231.

SEC. 401. (a) There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior. State abandoned mine reclamation funds (State funds) generated by grants from this title shall be established by each State pursuant to an approved State program.

Deposits.

(b) The fund shall consist of amounts deposited in the fund, from time to time derived from—

Reclamation fees.

(1) the reclamation fees levied under section 402 of this Act: *Provided*, That an amount not to exceed 10 per centum of such reclamation fees collected for any calendar quarter shall be reserved beginning in the first calendar year in which the fee is imposed and continuing for the remainder of that fiscal year and for the period in which such fee is imposed by law, for the purpose of section 507(c), subject to appropriation pursuant to authorization under section 712: *Provided further*, That not more than \$10,000,000 shall be available for such purposes;

User charges.

(2) any user charge imposed on or for land reclaimed pursuant to this title, after expenditures for maintenance have been deducted;

Donations.

(3) donations by persons, corporations, associations, and foundations for the purposes of this title; and

(4) recovered moneys as provided for in this title.

(c) Moneys in the fund may be used for the following purposes:

Recovered  
moneys.  
Fund moneys,  
use.

(1) reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of coal mine subsidence;

(2) for use under section 406, by the Secretary of Agriculture, of up to one-fifth of the money deposited in the funds annually and transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes;

(3) acquisition and filling of voids and sealing of tunnels, shafts, and entryways under section 409;

(4) acquisition of land as provided for in this title;

(5) enforcement and collection of the reclamation fee provided for in section 402 of this title;

(6) studies by the Department of the Interior by contract to such extent or in such amounts as are provided in appropriation Acts with public and private organizations to provide information, advice, and technical assistance, including research and demonstration projects, conducted for the purposes of this title;

(7) restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitutes an emergency as provided for in this title;

(8) grants to the States to accomplish the purposes of this title;

(9) administrative expenses of the United States and each State to accomplish the purposes of this title; and

(10) all other necessary expenses to accomplish the purposes of this title.

(d) Moneys from the fund shall be available for the purposes of this title, only when appropriated therefor, and such appropriations shall be made without fiscal year limitations.

#### RECLAMATION FEE

SEC. 402. (a) All operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 10 cents per ton, whichever is less.

Payment.  
30 USC 1232.

(b) Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after the date of enactment of this Act, and ending fifteen years after the date of enactment of this Act unless extended by an Act of Congress.

**Statements.**

(c) Together with such reclamation fee, all operators of coal mine operations shall submit a statement of the amount of coal produced during the calendar quarter, the method of coal removal and the type of coal, the accuracy of which shall be sworn to by the operator and notarized.

**Penalty.**

(d) Any person, corporate officer, agent or director, on behalf of a coal mine operator, who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification required in this section shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(e) Any portion of the reclamation fee not properly or promptly paid pursuant to this section shall be recoverable, with statutory interest, from coal mine operators, in any court of competent jurisdiction in any action at law to compel payment of debts.

(f) All Federal and State agencies shall fully cooperate with the Secretary of the Interior in the enforcement of this section.

**Geographic allocation.**

(g) (1) The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the national program needs for the funds.

**State or Indian reservation allocation.**

(2) Fifty per centum of the funds collected annually in any State or Indian reservation shall be allocated to that State or Indian reservation by the Secretary pursuant to any approved abandoned mine reclamation program to accomplish the purposes of this title. Where the Governor of a State or the head of a governing body of a tribe certifies that (i) objectives of the fund set forth in sections 403 and 409 have been achieved, (ii) there is a need for construction of specific public facilities in communities impacted by coal development, (iii) impact funds which may be available under provisions of the Federal Mineral Leasing Act of 1920, as amended, or the Act of October 20, 1976, Public Law 94-565 (90 Stat. 2662), are inadequate for such construction, and (iv) the Secretary concurs in such certification, then the Secretary may continue to allocate all or part of the 50 per centum share to that State or tribe for such construction: *Provided, however,* That if funds under this subparagraph (2) have not been expended within three years after their allocation, they shall be available for expenditure in any eligible area as determined by the Secretary.

31 USC 181 note.  
31 USC 1601 et  
seq.

(3) The balance of funds collected on an annual basis may be expended in any State at the discretion of the Secretary in order to meet the purposes of this title. Such funds may be expended directly by the Secretary or by making additional grants to approved State reclamation programs pursuant to section 405 when the Secretary finds that such programs are the best means of accomplishing the specific reclamation projects. The Secretary shall consult and coordinate with the respective States those projects funded directly or in conjunction with other Federal agencies.

**OBJECTIVES OF FUND**

30 USC 1233.

SEC. 403. Expenditure of moneys from the fund on lands and water eligible pursuant to section 404 for the purposes of this title shall reflect the following priorities in the order stated:

(1) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

(2) the protection of public health, safety, and general welfare from adverse effects of coal mining practices;

(3) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

(4) research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;

(5) the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices;

(6) the development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this title for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

#### ELIGIBLE LANDS AND WATER

SEC. 404. Lands and water eligible for reclamation or drainage abatement expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this Act, and for which there is no continuing reclamation responsibility under State or other Federal laws. 30 USC 1234.

#### STATE RECLAMATION PROGRAMS

SEC. 405. (a) Not later than the end of the one hundred and eighty-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation program incorporating the provisions of title IV and establishing procedures and requirements for preparation, submission, and approval of State programs consisting of the plan and annual submissions of projects. Publication in Federal Register. 30 USC 1235.

(b) Each State having within its borders coal mined lands eligible for reclamation under this title, may submit to the Secretary a State Reclamation Plan and annual projects to carry out the purposes of this title. State Reclamation Plan.

(c) The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 503 of this Act.

(d) If the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this title, sections 402 and 410 excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of the approved program: *Provided*, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection 405 (a).

(e) Each State Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed,

the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this title.

Application.

(f) On an annual basis, each State having an approved State Reclamation Plan may submit to the Secretary an application for the support of the State program and implementation of specific reclamation projects. Such annual requests shall include such information as may be requested by the Secretary including:

Contents.

- (1) a general description of each proposed project;
- (2) a priority evaluation of each proposed project;
- (3) a statement of the estimated benefits in such terms as: number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;
- (4) an estimate of the cost for each proposed project;
- (5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
- (6) an identification of lands or interest therein to be acquired and the estimated cost; and
- (7) in each year after the first in which a plan is filed under this title, an inventory of each project funded under the previous year's grant: which inventory shall include details of financial expenditures on such project together with a brief description of each such project, including project locations, landowner's name, acreage, type of reclamation performed.

(g) The costs for each proposed project under this section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

(h) Upon approved of State Reclamation Plan by the Secretary and of the surface mine regulatory program pursuant to section 503, the Secretary shall grant, on an annual basis, funds to be expended in such State pursuant to subsection 402(g) and which are necessary to implement the State reclamation program as approved by the Secretary.

Program  
monitorship.

(i) The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

Annual and other  
reports.

(j) The Secretary shall require annual and other reports as may be necessary to be submitted by each State administering the approved State reclamation program with funds provided under this title. Such reports shall include that information which the Secretary deems necessary to fulfill his responsibilities under this title.

(k) Indian tribes having within their jurisdiction eligible lands pursuant to section 401 or from which coal is produced, shall be considered as a "State" for the purposes of this title.

#### RECLAMATION OF RURAL LANDS

Agreements.  
30 USC 1236.

SEC. 404. (a) In order to provide for the control and prevention of erosion; sediment damages from unreclaimed mined lands, and to promote conservation and development of soil and water resources

of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners including owners of water rights), residents, and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water (excluding stream channelization), woodland, wildlife, and recreation resources, and agricultural productivity of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

(b) The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant, landowner, including owner of water rights, resident, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners, including owner of water rights, residents, or tenants in consultation with appropriate State and Federal agencies.

Plan, submittal to Secretary of Agriculture.

(c) Such plan shall be incorporated in an agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

(d) In return for such agreement by the landowner, including owner of water rights, resident, or tenant, the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant, in such amounts and subject to such conditions as the Secretary of Agriculture determines are appropriate in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section, depending on the income-producing potential of the land after reclaiming, shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred and twenty acres of land occupied by such owner, including water rights owners, resident, or tenant, or on not more than one hundred and twenty acres of land which has been purchased jointly by such landowners, including water rights owners, residents, or tenants, under an agreement for the enhancement of water quality or quantity or on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving offsite water quality, offsite esthetic values, or other offsite benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program: *Provided, however,* That the Secretary of Agriculture may allow for

Assistance.

Acreage limitation.

land use and conservation treatment on such lands occupied by any such owner in excess of such one hundred and twenty acre limitation up to three hundred and twenty acres, but in such event the amount of the grant to such landowner to carry out such reclamation on such lands shall be reduced proportionately.

## Termination.

(e) The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners, operator, or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would be in the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein.

(f) Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop; or (2) surrender of any such history and allotments.

## Rules and regulations.

(g) The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

(h) In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Soil Conservation Service.

## Funds, availability.

(i) Funds shall be made available to the Secretary of Agriculture for the purposes of this section, as provided in section 401.

## ACQUISITION AND RECLAMATION OF LAND ADVERSELY AFFECTED BY PAST COAL MINING PRACTICES

Finding of fact.  
30 USC 1237.

SEC. 407. (a) If the Secretary or the State pursuant to an approved State program, makes a finding of fact that—

(1) land or water resources have been adversely affected by past coal mining practices; and

(2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(4) the owners will not give permission for the United States, the States, political subdivisions, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

Affected lands,  
right of entry.  
Notice.

Then, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies, the Secretary, his agents, employees, or contractors, or the State pursuant to an approved State program, shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or

prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: *Provided, however,* That this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The Secretary, his agents, employees, or contractors or the State pursuant to an approved State program, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

Studies or  
exploratory work.

(c) The Secretary or the State pursuant to an approved State program, may acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the Secretary determines that acquisition of such land is necessary to successful reclamation and that—

Land acquisition.

(1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

(2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this title or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(d) Title to all lands acquired pursuant to this section shall be in the name of the United States or, if acquired by a State pursuant to an approved program, title shall be in the name of the State. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

Title.

Fair market  
value.

(e) States are encouraged as part of their approved State programs, to reclaim abandoned and unreclaimed mined lands within their boundaries and, if necessary, to acquire or to transfer such lands to the Secretary or the appropriate State regulatory authority under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this title but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this title, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price. Notwithstanding the provisions of paragraph (1), of this subsection, reclaimed land may be sold to the State or local

Grants.

government in which it is located at a price less than fair market value, which in no case shall be less than the cost to the United States of the purchase and reclamation of the land, as negotiated by the Secretary, to be used for a valid public purpose. If any land sold to a State or local government under this paragraph is not used for a valid public purpose as specified by the Secretary in the terms of the sales agreement then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

(f) The Secretary, in formulating regulations for making grants to the States to acquire land pursuant to this section, shall specify that acquired land meet the criteria provided for in subsections (c) and (d) of this section. The Secretary may provide by regulation that money derived from the lease, rental, or user charges of such acquired land and facilities thereon will be deposited in the fund.

(g) (1) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Secretary may sell or authorize the States to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such other regulations promulgated to insure that such lands are put to proper use consistent with local and State land use plans, if any, as determined by the Secretary.

Notice and hearing.

(2) The Secretary or the State pursuant to an approved State program, when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

Disabled, displaced or dislocated persons, housing construction or rehabilitation.

(h) In addition to the authority to acquire land under subsection (d) of this section the Secretary is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer acquired land to any State or to a political subdivision thereof, or to any person, firm, association, or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in section 410 or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land with or without monetary consideration: *Provided*, That, to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this title may be used to pay the actual construction costs of housing. The Secretary may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

Grants.

## LIENS

SEC. 408. (a) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the Secretary or the State, pursuant to an approved State program, shall itemize the moneys so expended and may file a statement thereof in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

Filing.  
30 USC 1238.

(b) The landowner may proceed as provided by local law to petition within sixty days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by local law.

Petition.

(c) The lien provided in this section shall be entered in the county office in which the land lies and which has responsibility under local law for the recording of judgments against land. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land.

Recordation.

## FILLING VOIDS AND SEALING TUNNELS

SEC. 409. (a) The Congress declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Secretary, at the request of the Governor of any State, or the chairman of any tribe, is authorized to fill such voids, seal such abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the Secretary determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment. State regulatory authorities are authorized to carry out such work pursuant to an approved abandoned mine reclamation program.

30 USC 1239.

(b) Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the respective States or Indian reservations under the provisions of subsection 402(g).

(c) The Secretary may make expenditures and carry out the purposes of this section without regard to provisions of section 404 in such States or Indian reservations where requests are made by the Governor

or tribal chairman and only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.

(d) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purposes of this section.

Land acquisition.

(e) The Secretary may acquire by purchase, donation, easement, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

#### EMERGENCY POWERS

30 USC 1240.

SEC. 410. (a) The Secretary is authorized to expend moneys from the fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, on eligible lands, if the Secretary makes a finding of fact that—

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

Right of entry.

(b) The Secretary, his agents, employees, and contractors shall have the right to enter upon any land where the emergency exists and any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass thereof. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: *Provided, however,* That this provision is not intended to create new rights of action or eliminate existing immunities.

#### FUND REPORT

Report to  
Congress.  
30 USC 1241.

SEC. 411. Not later than January 1, 1978, and annually thereafter, the Secretary or the State pursuant to an approved State program, shall report to the Congress on operations under the fund together with his recommendations as to future uses of the fund.

#### MISCELLANEOUS POWERS

30 USC 1242.

SEC. 412. (a) The Secretary or the State pursuant to an approved State program, shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this title.

(b) The Secretary or the State pursuant to an approved State program, shall have the power and authority to engage in cooperative projects under this title with any other agency of the United States of America, any State and their governmental agencies.

(c) The Secretary or the State pursuant to an approved State program, may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this title, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this title.

(d) The Secretary or the State pursuant to an approved State program, shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: *Provided*, That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended) and no control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

33 USC 1251  
note.

(e) The Secretary may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this title.

Funds, transfer.

#### INTERAGENCY COOPERATION

SEC. 413. All departments, boards, commissioners, and agencies of the United States of America shall cooperate with the Secretary by providing technical expertise, personnel, equipment, materials, and supplies to implement and administer the provisions of this title.

30 USC 1243.

## TITLE V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

### ENVIRONMENTAL PROTECTION STANDARDS

SEC. 501. (a) Not later than the end of the ninety-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering an interim regulatory procedure for surface coal mining and reclamation operations setting mining and reclamation performance standards based on and incorporating the provisions set out in section 502(c) of this Act. The issuance of the interim regulations shall be deemed not to be a major Federal action within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Such regulations, which shall be concise and written in plain, understandable language shall not be promulgated and published by the Secretary until he has—

Regulations.  
Publication in  
Federal Register.  
30 USC 1251.

(A) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than thirty days after such publication to submit written comments thereon;

(B) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

33 USC 1251  
note.

**Hearing.**

(C) held at least one public hearing on the proposed regulations.

The date, time, and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations. The Secretary shall consider all comments and relevant data presented at such hearing before final promulgation and publication of the regulations.

**Publication in Federal Register.**

(b) Not later than one year after the enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards based on and conforming to the provisions of title V and establishing procedures and requirements for preparation, submission, and approval of State programs; and development and implementation of Federal programs under the title. The Secretary shall promulgate these regulations, which shall be concise and written in plain, understandable language in accordance with the procedures in section 501(a).

## INITIAL REGULATORY PROCEDURES

**Permits.  
30 USC 1252.**

SEC. 502. (a) No person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands on which such operations are regulated by a State unless such person has obtained a permit from the State's regulatory authority.

(b) All surface coal mining operations on lands on which such operations are regulated by a State which commence operations pursuant to a permit issued on or after six months from the date of enactment of this Act shall comply, and such permits shall contain terms requiring compliance with, the provisions set out in subsection (c) of this section. Prior to final disapproval of a State program or prior to promulgation of a Federal program or a Federal lands program pursuant to this Act, a State may issue such permits.

**Post, p. 486.**

(c) On and after nine months from the date of enactment of this Act, all surface coal mining operations on lands on which such operations are regulated by a State shall comply with the provisions of subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(15), 515(b)(19), and 515(d) of this Act or, where a surface coal mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, such operation shall comply with the requirements of section 515(c)(4) and (5) without regard to the requirements of section 515(b)(3) or 515(d)(2) and (3), with respect to lands from which overburden and the coal seam being mined have not been removed: *Provided, however,* That surface coal mining operations in operation pursuant to a permit issued by a State before the date of enactment of this Act, issued to a person as defined in section 701(19) in existence prior to May 2, 1977 and operated by a person whose total annual production of coal from surface and underground coal mining operations does not exceed one hundred thousand tons shall not be subject to the provisions of this subsection except with reference to the provision of subsection 515(d)(1) until January 1, 1979.

**Limitation.****Post, p. 516.****Permit application.**

(d) Not later than two months following the approval of a State program pursuant to section 503 or the implementation of a Federal program pursuant to section 504, regardless of litigation contesting that approval or implementation, all operators of surface coal mines in

expectation of operating such mines after the expiration of eight months from the approval of a State program or the implementation of a Federal program, shall file an application for a permit with the regulatory authority. Such application shall cover those lands to be mined after the expiration of eight months from the approval of a State program or the implementation of a Federal program. The regulatory authority shall process such applications and grant or deny a permit within eight months after the date of approval of the State program or the implementation of the Federal program, unless specially enjoined by a court of competent jurisdiction, but in no case later than forty-two months from the date of enactment of this Act.

(e) Within six months after the date of enactment of this Act, the Secretary shall implement a Federal enforcement program which shall remain in effect in each State as surface coal mining operations are required to comply with the provisions of this Act, until the State program has been approved pursuant to this Act or until a Federal program has been implemented pursuant to this Act. The enforcement program shall—

Federal enforcement program.

(1) include inspections of surface coal mine sites which may be made (but at least one inspection for every site every six months), without advance notice to the mine operator and for the purpose of ascertaining compliance with the standards of subsections (b) and (c) above. The Secretary shall order any necessary enforcement action to be implemented pursuant to the Federal enforcement provision of this title to correct violations identified at the inspections;

Inspections.

(2) provide that upon receipt of inspection reports indicating that any surface coal mining operation has been found in violation of subsections (b) and (c) above, during not less than two consecutive State inspections or upon receipt by the Secretary of information which would give rise to reasonable belief that such standards are being violated by any surface coal mining operation, the Secretary shall order the immediate inspection of such operation by Federal inspectors and the necessary enforcement actions, if any, to be implemented pursuant to the Federal enforcement provisions of this title. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection;

(3) provide that the State regulatory agency file with the Secretary and with a designated Federal office centrally located in the county or area in which the inspected surface coal mine is located copies of inspection reports made;

Reports, filing.

(4) provide that moneys authorized by section 712 shall be available to the Secretary prior to the approval of a State program pursuant to this Act to reimburse the State for conducting those inspections in which the standards of this Act are enforced and for the administration of this section.

Post, p. 524.

(5) for purposes of this section, the term "Federal inspector" means personnel of the Office of Surface Mining Reclamation and Enforcement and such additional personnel of the United States Geological Survey, Bureau of Land Management, or of the Mining Enforcement and Safety Administration so designated by the Secretary, or such other personnel of the Forest Service, Soil Conservation Service, or the Agricultural Stabilization and Conservation Service as arranged by appropriate agreement with the Secretary on a reimbursable or other basis;

"Federal inspector."

Interim period.

(f) Following the final disapproval of a State program, and prior to promulgation of a Federal program or a Federal lands program pursuant to this Act, including judicial review of such a program, existing surface coal mining operations may continue surface mining operations pursuant to the provisions of section 502 of this Act. During such period no new permits shall be issued by the State whose program has been disapproved. Permits which lapse during such period may continue in full force and effect until promulgation of a Federal program or a Federal lands program.

#### STATE PROGRAMS

30 USC 1253.

SEC. 503. (a) Each State in which there are or may be conducted surface coal mining operations on non-Federal lands, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in sections 521 and 523 and title IV of this Act, shall submit to the Secretary, by the end of the eighteenth-month period beginning on the date of enactment of this Act, a State program which demonstrates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through—

Post, p. 504.

Post, p. 510.

Ante, p. 456.

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this Act, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this Act;

(4) a State law which provides for the effective implementations, maintenance, and enforcement of a permit system, meeting the requirements of this title for the regulations of surface coal mining and reclamation operations for coal on lands within the State;

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 522 provided that the designation of Federal lands unsuitable for mining shall be performed exclusively by the Secretary after consultation with the State; and

(6) establishment for the purposes of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations; and

(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.

(b) The Secretary shall not approve any State program submitted under this section until he has—

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

Rules and regulations.

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program was submitted to him.

(c) If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program or portion thereof. The Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

(d) For the purposes of this section and section 504, the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under titles IV and VII of this Act or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 502 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of sections 503 and 504 shall again be fully applicable.

#### FEDERAL PROGRAMS

Sec. 504. (a) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal program for a State no later than thirty-four months after the date of enactment of this Act if such State—

(1) fails to submit a State program covering surface coal mining and reclamation operations by the end of the eighteen-month period beginning on the date of enactment of this Act;

(2) fails to resubmit an acceptable State program within sixty days of disapproval of a proposed State program: *Provided*, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided for in clause (1) of this subsection; or

(3) fails to implement, enforce, or maintain its approved State program as provided for in this Act.

If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal program the Secretary shall be the

33 USC 1251  
note.

Hearing.

Notice of  
disapproval.

*Ante*, p. 456.  
*Post*, p. 516.

30 USC 1254.

Post, p. 507.

regulatory authority. If a Federal program is implemented for a State, section 522 (a), (c), and (d) shall not apply for a period of one year following the date of such implementation. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

Post, p. 504.

(b) In the event that a State has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 521, of that part of the State program not being enforced by such State.

Notice and hearing.

(c) Prior to promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

Permits, review.

(d) Permits issued pursuant to a previously approved State program shall be valid but reviewable under a Federal program. Immediately following promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him an opportunity for hearing and a reasonable opportunity for submission of a new application and reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 501 (b), to conform ongoing surface mining and reclamation operations to the requirements of the Federal program.

(e) A State which has failed to obtain the approval of a State program prior to implementation of a Federal program may submit a State program at any time after such implementation. Upon the submission of such a program, the Secretary shall follow the procedures set forth in section 503 (b) and shall approve or disapprove the State program within six months after its submittal. Approval of a State program shall be based on the determination that the State has the capability of carrying out the provisions of this Act and meeting its purposes through the criteria set forth in section 503 (a) (1) through (6). Until a State program is approved provided under this section, the Federal program shall remain in effect and all actions taken by the Secretary pursuant to such Federal program, including the terms and conditions of any permit issued thereunder shall remain in effect.

Hearing.

(f) Permits issued pursuant to the Federal program shall be valid under any superseding State program: *Provided*, That the Federal permittee shall have the right to apply for a State permit to supersede his Federal permit. The State regulatory authority may review such permit to determine that the requirements of this Act and the approved State program are not violated. Should the State program contain additional requirements not contained in the Federal program, the permittee will be provided opportunity for hearing and a reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 501, to conform ongoing surface mining and reclamation operations to the additional State requirements.

State statutes or regulations, preemption.

(g) Whenever a Federal program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this Act shall, insofar as they interfere with the achievement of the purposes and the requirements of this Act and the Federal program, be preempted and superseded by the Federal program. The Secretary shall set forth any State law or regulation which is preempted and superseded by the Federal program.

(h) Any Federal program shall include a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation.

Permits,  
coordination.

## STATE LAWS

SEC. 505. (a) No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

30 USC 1255.

(b) Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operation than do the provisions of this Act or any regulation issued pursuant thereto shall not be construed to be inconsistent with this Act. The Secretary shall set forth any State law or regulation which is construed to be inconsistent with this Act. Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.

## PERMITS

SEC. 506. (a) No later than eight months from the date on which a State program is approved by the Secretary, pursuant to section 503 of this Act, or no later than eight months from the date on which the Secretary has promulgated a Federal program for a State not having a State program pursuant to section 504 of this Act, no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program or by the Secretary pursuant to a Federal program; except a person conducting surface coal mining operations under a permit from the State regulatory authority, issued in accordance with the provisions of section 502 of this Act, may conduct such operations beyond such period if an application for a permit has been filed in accordance with the provisions of this Act, but the initial administrative decision has not been rendered.

30 USC 1256.

(b) All permits issued pursuant to the requirements of this Act shall be issued for a term not to exceed five years: *Provided*, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for such specified longer term, the regulatory authority may grant a permit for such longer term. A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

Term.

(c) A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three years of the issuance of the permit: *Provided*, That the regulatory authority may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding

Termination.

30 USC 181 note.

30 USC 207.

Renewal.

such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: *Provided further*, That in the case of a coal lease issued under the Federal Mineral Leasing Act, as amended, extensions of time may not extend beyond the period allowed for diligent development in accordance with section 7 of that Act: *Provided further*, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(d) (1) Any valid permit issued pursuant to this Act shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and such renewal shall be issued (provided that on application for renewal the burden shall be on the opponents of renewal), subsequent to fulfillment of the public notice requirements of sections 513 and 514 unless it is established that and written findings by the regulatory authority are made that—

(A) the terms and conditions of the existing permit are not being satisfactorily met;

(B) the present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this Act and the approved State plan or Federal program pursuant to this Act; or

(C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(D) the operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the regulatory authority might require pursuant to section 509; or

(E) any additional revised or updated information required by the regulatory authority has not been provided. Prior to the approval of any renewal of permit the regulatory authority shall provide notice to the appropriate public authorities.

Boundary extension.

(2) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this Act: *Provided, however*, That if the surface coal mining operations authorized by a permit issued pursuant to this Act were not subject to the standards contained in section 510(b)(5) (A) and (B) by reason of complying with the proviso of section 510(b)(5), then the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to section 508 shall not be subject to the standards contained in section 510(b)(5) (A) and (B).

(3) Any permit renewal shall be for a term not to exceed the period of the original permit established by this Act. Application for permit renewal shall be made at least one hundred and twenty days prior to the expiration of the valid permit.

## APPLICATION REQUIREMENTS

Fee.  
30 USC 1257.

SEC. 507. (a) Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal

program under the provisions of this Act shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

(b) The permit application shall be submitted in a manner satisfactory to the regulatory authority and shall contain, among other things—

Contents.

(1) the names and addresses of (A) the permit applicant; (B) every legal owner of record of the property (surface and mineral), to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; and (E) the operator if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) the names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area;

(3) a statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification and each pending application;

(4) if the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning, of record 10 per centum or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the five-year period preceding the date of submission of the application;

(5) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, and which includes the ownership, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection;

(7) a description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) the applicant shall file with the regulatory authority on an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations and shall

provide to the regulatory authority a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation: *Provided*, That nothing in this Act shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes.

(10) the name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: *Provided, however*, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency. *Provided further*, That the permit shall not be approved until such information is available and is incorporated into the application;

(12) when requested by the regulatory authority, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) accurate maps to an appropriate scale clearly showing (A) the land to be affected as of the date of application and (B) all types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or 1:25,000 or larger, including all manmade features and significant known archeological sites existing on the date of application. Such a map or plan shall among other things specified by the regulatory authority show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area;

(14) cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse

areas and top-soil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(15) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined except that the provisions of this paragraph (15) may be waived by the regulatory authority with respect to the specific application by a written determination that such requirements are unnecessary;

(16) for those lands in the permit application which a reconnaissance inspection suggests may be prime farm lands, a soil survey shall be made or obtained according to standards established by the Secretary of Agriculture in order to confirm the exact location of such prime farm lands, if any; and

(17) information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

Confidential  
information.

(c) If the regulatory authority finds that the probable total annual production at all locations of any coal surface mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences required by subsection (b) (11) and the statement of the result of test borings or core samplings required by subsection (b) (15) of this section shall, upon the written request of the operator be performed by a qualified public or private laboratory designated by the regulatory authority and the cost of the preparation of such determination and statement shall be assumed by the regulatory authority.

(d) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a reclamation plan which shall meet the requirements of this Act.

Reclamation  
plan,  
requirement.  
Public inspection.

(e) Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate public office approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

(f) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property

Insurance  
certificate.

damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of State law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

Blasting plan.

(g) Each applicant for a surface coal mining and reclamation permit shall submit to the regulatory authority as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of section 515(b) (15).

#### RECLAMATION PLAN REQUIREMENTS

Statement.  
30 USC 1258.

SEC. 508. (a) Each reclamation plan submitted as part of a permit application pursuant to any approved State program or a Federal program under the provisions of this Act shall include, in the degree of detail necessary to demonstrate that reclamation required by the State or Federal program can be accomplished, a statement of:

Contents.

(1) the identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and, if applicable, a soil survey prepared pursuant to section 507(b) (16); and

(C) the productivity of the land prior to mining, including appropriate classification as prime farm lands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management;

(3) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, State and local governments or agencies thereof which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 515(b) (7) (A), (B), (C), and (D), for those food, forage, and forest lands identified in sections 515(b) (7); an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to

comply with each of the requirements set out in section 515;

(6) the consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;

(7) a detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) the consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable State and local land use plans and programs;

(9) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) the consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental, and climatological conditions;

(11) all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) the results of test boring which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the regulatory authority, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the mineral and overburden: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record;

Confidential information.

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to such water; and

(C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured;

(14) such other requirements as the regulatory authority shall prescribe by regulations.

(b) Any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority.

Confidential information.

#### PERFORMANCE BONDS

SEC. 509. (a) After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable, as appropriate, to the United States or to the State, and conditional upon faithful performance of all the requirements of this Act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial

30 USC 1259.

- term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the regulatory authority. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.
- Amount.**
- Liability.** (b) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements in section 515. The bond shall be executed by the operator and a corporate surety licensed to do business in the State where such operation is located, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or such State, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.
- Execution.** (c) The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount or in lieu of the establishment of a bonding program, as set forth in this section, the Secretary may approve as part of a State or Federal program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.
- Cash or securities.** (d) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.
- Bond adjustment.** (e) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

## PERMIT APPROVAL OR DENIAL

Notice and  
hearing.  
30 USC 1260.

SEC. 510. (a) Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this Act and pursuant to an approved State program or Federal program under the provisions of this Act, including public notification and an opportunity for a public hearing as required by section 513, the regulatory authority shall grant, require modification of, or deny the application for a permit in a reasonable time set by the regulatory authority and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of the applicable State or Federal program. Within ten days after the granting of a permit, the regulatory authority shall notify the local govern-

mental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

(b) No permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that—

Requirements.

(1) the permit application is accurate and complete and that all the requirements of this Act and the State or Federal program have been complied with;

(2) the applicant has demonstrated that reclamation as required by this Act and the State or Federal program can be accomplished under the reclamation plan contained in the permit application;

(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 507(b) has been made by the regulatory authority and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside permit area;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 522 of this Act or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 522(a)(4)(D) or section 522(c) (unless in such an area as to which an administrative proceeding has commenced pursuant to section 522(a)(4)(D) of this Act, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit);

Post, p. 507.

(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would—

(A) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production, or

(B) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors in (A) of subsection (b)(5):

*Provided*, That this paragraph (5) shall not affect those surface coal mining operations which in the year preceding the enactment of this Act (I) produced coal in commercial quantities, and were located within or adjacent to alluvial valley floors or (II) had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors.

With respect to such surface mining operations which would have been within the purview of the foregoing proviso but for the fact that no coal was so produced in commercial quantities and no such specific permit approval was so received, the Secretary, if he determines that substantial financial and legal commitments were made by an operator prior to January 1, 1977, in connection with any such operation, is

Coal exchange programs.

43 USC 1716.

authorized, in accordance with such regulations as the Secretary may prescribe, to enter into an agreement with that operator pursuant to which the Secretary may, notwithstanding any other provision of law, lease other Federal coal deposits to such operator in exchange for the relinquishment by such operator of his Federal lease covering coal deposits involving such mining operations, or pursuant to section 206 of Federal Land Policy and Management Act of 1976, convey to the fee holder of any such coal deposits involving such mining operations the fee title to other available Federal coal deposits in exchange for the fee title to such deposits so involving such mining operations. It is the policy of the Congress that the Secretary shall develop and carry out a coal exchange program to acquire private fee coal precluded from being mined by the restrictions of this paragraph (5) in exchange for Federal coal which is not so precluded. Such exchanges shall be made under section 206 of the Federal Land Policy and Management Act of 1976;

(6) in cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the regulatory authority—

(A) the written consent of the surface owner to the extraction of coal by surface mining methods; or

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-sub-surface legal relationship shall be determined in accordance with State law: *Provided*, That nothing in this Act shall be construed to authorize the regulatory authority to adjudicate property rights disputes.

(c) The applicant shall file with his permit application a schedule listing any and all notices of violations of this Act and any law, rule, or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act or such other laws referred to this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation and no permit shall be issued to an applicant after a finding by the regulatory authority, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this Act.

(d) (1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland pursuant to Section 507(b) (16), the regulatory authority shall, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of Interior with the concurrence of the Secretary of Agriculture, grant a

Notices of  
violations.  
Rules and  
regulations.

Penalty.

Prime farmland  
mining, permit.

permit to mine on prime farmland if the regulatory authority finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in Section 515(b)(7). Except for compliance with subsection (b), the requirements of this paragraph (1) shall apply to all permits issued after the date of enactment of this Act.

(2) Nothing in this subsection shall apply to any permit issued prior to the date of enactment of this Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of this Act.

#### REVISION OF PERMITS

SEC. 511. (a) (1) During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the regulatory authority. 30 USC 1261.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this Act and the State or Federal program can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the State or Federal program. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided*, That any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

Guidelines.  
Notice and  
hearing.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the regulatory authority.

(c) The regulatory authority shall within a time limit prescribed in regulations promulgated by the regulatory authority, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit: *Provided*, That such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the State or Federal program.

#### COAL EXPLORATION PERMITS

SEC. 512. (a) Each State or Federal program shall include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by the regulatory authority. Such regulations shall include, at a minimum (1) the requirement that prior to conducting any exploration under this section, any person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation in accordance with the performance standards in section 515 of this Act of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

Regulations.  
30 USC 1262.

Contents.

Confidential  
information.

(b) Information submitted to the regulatory authority pursuant to this subsection as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

(c) Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of section 518.

(d) No operator shall remove more than two hundred and fifty tons of coal pursuant to an exploration permit without the specific written approval of the regulatory authority.

(e) Coal exploration on Federal lands shall be governed by section 4 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1085).

#### PUBLIC NOTICE AND PUBLIC HEARINGS

30 USC 1263.

Sec. 513. (a) At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of this Act or an approved State program, the applicant shall submit to the regulatory authority a copy of his advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission such advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The regulatory authority shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities, of water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the regulatory authority on the mining applications with respect to the effect of the proposed operation on the environment which are within their area of responsibility. Such comments shall immediately be transmitted to the applicant by the regulatory authority and shall be made available to the public at the same locations as are the mining applications.

Permit  
application,  
objections.

(b) Any person having an interest which is or may be adversely affected or the officer or head of any Federal, State, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the regulatory authority within thirty days after the last publication of the above notice. Such objections shall immediately be transmitted to the applicant by the regulatory authority and shall be made available to the public. If written objections are filed and an informal conference requested, the regulatory authority shall then hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such objections or request. The date, time and location of such informal conference shall be advertised by the regulatory authority in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The regulatory authority may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed min-

Informal  
conference.

ing area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.

Records.

(c) Where the lands included in an application for a permit are the subject of a Federal coal lease in connection with which hearings were held and determinations were made under sections 2(a) (3) (A), (B) and (C) of the Mineral Lands Leasing Act, as amended (30 U.S.C. 201a) (3) (A), (B) and (C), such hearings shall be deemed as to the matters covered to satisfy the requirements of this section and section 514 and such determinations shall be deemed to be a part of the record and conclusive for purposes of sections 510, 514 and this section.

30 USC 201.

## DECISIONS OF REGULATORY AUTHORITY AND APPEALS

SEC. 514. (a) If an informal conference has been held pursuant to section 513(b), the regulatory authority shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the regulatory authority, granting or denying the permit in whole or in part and stating the reasons therefor, within the sixty days of said hearings.

30 USC 1264.

(b) If there has been no informal conference held pursuant to section 513(b), the regulatory authority shall notify the applicant for a permit within a reasonable time as determined by the regulatory authority and set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved in whole or part.

(c) If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the regulatory authority on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The regulatory authority shall hold a hearing within thirty days of such request and provide notification to all interested parties at the time that the applicant is so notified. If the Secretary is the regulatory authority the hearing shall be of record and governed by 5 U.S.C. Section 554. Where the regulatory authority is the State, such hearing shall be of record, adjudicatory in nature and no person who presided at a conference under section 513(b) shall either preside at the hearing or participate in this decision thereon or in any administrative appeal therefrom. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

Notice and hearing.

(d) Where a hearing is requested pursuant to subsection (c), the Secretary, where the Secretary is the regulatory authority, or the State hearing authority may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if—

Temporary relief.

Notice and  
hearing.

(1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(3) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(e) For the purpose of such hearing, the regulatory authority may administer oaths, subpoena witnesses, or written or printed materials, compel attendance of the witnesses, or production of the materials, and take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this Act shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

(f) Any applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector, and who is aggrieved by the decision of the regulatory authority, or if the regulatory authority fails to act within the time limits specified in this Act shall have the right to appeal in accordance with section 526.

Post, p. 512.

#### ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

30 USC 1265.

SEC. 515. (a) Any permit issued under any approved State or Federal program pursuant to this Act to conduct surface coal mining operations shall require that such surface coal mining operations will meet all applicable performance standards of this Act, and such other requirements as the regulatory authority shall promulgate.

General  
standards.

(b) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to—

Fuel, maximum  
use.

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized;

Land use,  
restoration.

(2) restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of Federal, State, or local law;

Original land  
contour,  
restoration.

(3) except as provided in subsection (c) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act): *Provided, however,* That in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness

of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: *And provided further*, That in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act;

(4) stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

Surface areas,  
stabilization.

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation;

Topsoil.

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) for all prime farm lands as identified in section 507(b)(10) to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the Secretary of Agriculture, and the operator shall, as a minimum, be required to—

Prime farm lands.

(A) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) replace and regrade the root zone material described in (B) above with proper compaction and uniform depth over the regraded spoil material; and

(D) redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (A);

**Water  
impoundments.**

(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that—

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable Federal and State law in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial recreational, or domestic uses;

**Augering  
operations.**

(9) conducting any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete; and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the regulatory authority determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety: *Provided*, That the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or to protect against adverse water quality impacts;

**Hydrologic  
balance.**

(10) minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface waters;

(B) (i) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law;

(ii) constructing any siltation structures pursuant to subparagraph (B) (i) of this subsection prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(C) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized; and depositing the silt and debris at a site and in a manner approved by the regulatory authority;

(D) restoring recharge capacity of the mined area to approximate premining conditions;

(E) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(G) such other actions as the regulatory authority may prescribe;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this Act;

Waste disposal.

(12) refrain from surface coal mining within five hundred feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: *Provided*, That the regulatory authority shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if (A) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners, and (B) such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

Underground mines.

(13) design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards

Coal mine waste piles.

and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

Fire hazards.

(14) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion;

Explosives.

(15) insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority, which shall include provisions to—

Notice and publication of blasting schedule.

(A) provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in such areas prior to any blasting;

Log.

(B) maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area;

(D) require that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority;

Pre-blasting survey.

(E) provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the regulatory authority and a copy to the resident or owner making the request. The area of the survey shall be decided by the regulatory authority and shall include such provisions as the Secretary shall promulgate.

Combined surface and underground mining, requirement variance.

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations: *Provided, however*, That where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the regulatory authority may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) if the regulatory authority finds in writing that:

(i) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this Act;

(vi) provisions for the off-site storage of spoil will comply with section 515(b) (22);

(B) if the Secretary has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subsection and section 501, and has imposed such additional requirements as he deems necessary;

(C) if variances granted under the provisions of this subsection are to be reviewed by the regulatory authority not more than three years from the date of issuance of the permit; and

(D) if liability under the bond filed by the applicant with the regulatory authority pursuant to section 509(b) shall be for the duration of the underground mining operations and until the requirements of sections 515(b) and 519 have been fully complied with.

(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20) assume the responsibility for successful revegetation, as required by paragraph (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with paragraph (19) above, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work: *Provided*, That when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year

Regulations.

*Ante*, p. 467.

Access roads.

Revegetation.

period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural postmining land use: *Provided further*, That when the regulatory authority issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the authority may grant exceptions to the provisions of paragraph (19) above;

Offsite area protection.

(21) protect offsite areas from slides or damage occurring the surface coal mining and reclamation operations, deposit spoil material or locate any part of the operations or accumulations outside the permit area;

Spoil disposal.

(22) place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that—

(A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) the disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the regulatory authority, the spoil could be placed in compliance with all the requirements of this Act, and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

(F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

(G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) all other provisions of this Act are met.

(23) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site; and

(24) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

Slide or erosion barriers.

(25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine shall be retained in place as a barrier to slides and erosion.

(c)(1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit surface mining operations for the purposes set forth in paragraph (3) of this subsection.

Restoration of original contour, exceptions.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a permit without regard to the requirement to restore to approximate original contour set forth in subsection 515(b)(3) or 515(d)(2) and (3) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c)(4)(A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, residential or public facility (including recreational facilities) use is proposed or the postmining use of the affected land, the regulatory authority may grant a permit for a surface mining operation of the nature described in subsection (c)(2) where—

(A) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—

- (i) compatible with adjacent land uses;
- (ii) obtainable according to data regarding expected need and market;
- (iii) assured of investment in necessary public facilities;
- (iv) supported by commitments from public agencies where appropriate;
- (v) practicable with respect to private financial capability for completion of the proposed use;
- (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and
- (vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

(D) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

(E) all other requirements of this Act will be met.

(4) In granting any permit pursuant to this subsection the regulatory authority shall require that—

(A) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the out slopes except at specified points;

(D) no damage will be done to natural watercourses;

(E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: *Provided*, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subsection (b) (22) of this section;

(F) insure stability of the spoil retained on the mountaintop and meet the other requirements of this Act;

Regulations.

(5) The regulatory authority shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

Permit review.

(6) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

Steep-slope surface coal mining.

(d) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section: *Provided, however*, That the provisions of this subsection (d) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of subsection (c) hereof:

(1) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut: *Provided*, That spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of paragraph 515(b) (3) or 515(d) (2) shall be permanently stored pursuant to section 515(b) (22).

(2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.

(3) The operator may not disturb land above the top of the highwall unless the regulatory authority finds that such disturbance will facilitate compliance with the environmental protection standards of this section: *Provided, however*, That the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

"Steep slope."

(4) For the purposes of this subsection (d), the term "steep slope" is any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State.

Original contour restoration, requirements variances.

(e) (1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit variances for the purposes set forth in paragraph (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in subsection 515(d)(2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities) in accord with the further provisions of (3) and (4) of this subsection.

(3) (A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use;

(B) is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) after approval of the appropriate state environmental agencies, the watershed of the affected land is deemed to be improved.

(4) In granting a variance pursuant to this subsection the regulatory authority shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned post-mining land use, insure stability of the spoil retained on the bench, meet all other requirements of this Act, and all spoil placement off the mine bench must comply with subsection 515(b)(22).

(5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

(f) The Secretary, with the written concurrence of the Chief of Engineers, shall establish within one hundred and thirty-five days from the date of enactment, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste piles referred to in section 515(b)(13) and section 516(b)(5). Such standards and criteria shall conform to the standards and criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for: review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work.

Regulations.

Review of exceptions.

Coal mine waste piles, standards and criteria.

## SURFACE EFFECTS OF UNDERGROUND COAL MINING OPERATIONS

SEC. 516. (a) The Secretary shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations, embodying the following requirements and in accordance with

Rules and regulations.  
30 USC 1266.

*Ante*, p. 467.

30 USC 801 note.

Requirements.

the procedures established under section 501 of this Act: *Provided, however,* That in adopting any rules and regulations the Secretary shall consider the distinct difference between surface coal mining and underground coal mining. Such rules and regulations shall not conflict with nor supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 nor any regulation issued pursuant thereto, and shall not be promulgated until the Secretary has obtained the written concurrence of the head of the department which administers such Act.

(b) Each permit issued under any approved State or Federal program pursuant to this Act and relating to underground coal mining shall require the operator to—

(1) adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided,* That nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining;

(2) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(3) fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

(4) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure that the leachate will not degrade below water quality standards established pursuant to applicable Federal and State law surface or ground waters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to section 515(f), all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(6) establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(7) protect offsite areas from damages which may result from such mining operations;

(8) eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the

quantity of water in surface ground water systems both during and after coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and

(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall such contributions be in excess of requirements set by applicable State or Federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(10) with respect to other surface impacts not specified in this subsection including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 515 of this title for such effects which result from surface coal mining operations: *Provided*, That the Secretary shall make such modifications in the requirements imposed by this subparagraph as are necessary to accommodate the distinct difference between surface and underground coal mining;

(11) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(12) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the regulatory authority shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

Urbanized areas,  
mining  
suspension.

(d) The provisions of title V of this Act relating to State and Federal programs, permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The Secretary shall promulgate such modifications in accordance with the rulemaking procedure established in section 501 of this Act.

*Ante*, p. 467.

## INSPECTIONS AND MONITORING

30 USC 1267.

SEC. 517. (a) The Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of approved State programs, or to develop or enforce any Federal program, and for such purposes authorized representatives of the Secretary shall have a right of entry to, upon, or through any surface coal mining and reclamation operations.

(b) For the purpose of developing or assisting in the development, administration, and enforcement of any approved State or Federal program under this Act or in the administration and enforcement of any permit under this Act, or of determining whether any person is in violation of any requirement of any such State or Federal program or any other requirement of this Act—

(1) the regulatory authority shall require any permittee to (A) establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use, and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as a regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary;

(2) for those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the regulatory authority shall specify those—

(A) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(B) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;

(C) records of well logs and borehole data to be maintained; and

(D) monitoring sites to record precipitation.

The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the regulatory authority in order to assure their reliability and validity; and

(3) the authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials (A) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act.

(c) The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit; (2) occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act.

(d) Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible

Records and reports.

Right of entry.

sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(e) Each inspector, upon detection of each violation of any requirement of any State or Federal program or of this Act, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.

(f) Copies of any records, reports, inspection materials, or information obtained under this title by the regulatory authority shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and State area of mining so that they are conveniently available to residents in the areas of mining.

(g) No employee of the State regulatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both. The Secretary shall (1) within sixty days after enactment of this Act, publish in the Federal Register, in accordance with section 553 of title 5, United States Code, regulations to establish methods by which the provisions of this subsection will be monitored and enforced by the Secretary and such State regulatory authority, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning any financial interest which may be affected by this subsection, and (2) report to the Congress as part of the Annual Report (section 706) on actions taken and not taken during the preceding year under this subsection.

(h) (1) Any person who is or may be adversely affected by a surface mining operation may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which he has reason to believe exists at the surface mining site. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation. The Secretary shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(2) The Secretary shall also, by regulation, establish procedures to insure that adequate and complete inspections are made. Any such person may notify the Secretary of any failure to make such inspections, after which the Secretary shall determine whether adequate and complete inspections have been made. The Secretary shall furnish such persons a written statement of the reasons for the Secretary's determination that adequate and complete inspections have or have not been conducted.

#### PENALTIES

SEC. 518. (a) In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 502 or during Federal enforcement of a State program pursuant to section 521 of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 521, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each viola-

Violations.

Information,  
availability to  
public.

Conflict of  
interest.

Penalty.

Publication in  
Federal Register.

Report to  
Congress.

Review.

30 USC 1268.

*Ante*, p. 468.

tion. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

Hearing.

(b) A civil penalty shall be assessed by the Secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the Secretary shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Secretary shall consolidate such hearings with other proceedings under section 521 of this Act. Any hearing under this section shall be of record and shall be subject to section 554 of title 5 of the United States Code. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Secretary after the Secretary has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

Notice.

(c) Upon the issuance of a notice or order charging that a violation of the Act has occurred, the Secretary shall inform the operator within thirty days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Secretary shall within thirty days remit the appropriate amount to the person, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater. Failure to forward the money to the Secretary within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

Waiver.

(d) Civil penalties owed under this Act, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States.

Willful  
violations.

*Ante*, p. 468.

(e) Any person who willfully and knowingly violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 502 or during Federal enforcement of a State program pursuant to section 521 of this Act or fails or refuses to comply with any order issued under section 521 or section 526 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act, except an order incorporated in a decision issued under subsection (b) of this section or section 704 of this Act, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

*Id.*, p. 520.

Corporate  
violations.

(f) Whenever a corporate permittee violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 502 or Federal enforcement of a State program pursuant to section 521 of this Act or fails or

refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act except an order incorporated in a decision issued under subsection (b) of this section or section 703 of this Act, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

*Post*, p. 520.

(g) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to a Federal program or a Federal lands program or any order of decision issued by the Secretary under this Act, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(h) Any operator who fails to correct a violation for which a citation has been issued under section 521(a) within the period permitted for its correction (which period shall not end until the entry of a final order by the Secretary, in the case of any review proceedings under section 525 initiated by the operator wherein the Secretary orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under section 526 initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation continues.

Failure to correct violations.

(i) As a condition of approval of any State program submitted pursuant to section 503 of this Act, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement right or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

*Ante*, p. 470.

#### RELEASE OF PERFORMANCE BONDS OR DEPOSITS

Sec. 519. (a) The permittee may file a request with the regulatory authority for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in

30 USC 1269.

Publication in newspaper.

which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

Inspection and  
evaluation.

(b) Upon receipt of the notification and request, the regulatory authority shall within thirty days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution. The regulatory authority shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the filing of the request, if no public hearing is held pursuant to section 519(f), and if there has been a public hearing held pursuant to section 519(f), within thirty days thereafter.

Notice.

(c) The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this Act according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of 60 per centum of the bond or collateral for the applicable permit area.

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section 515 of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 515(b)(10) or until soil productivity for prime farm lands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 507(b)(16). Where a silt dam is to be retained as a permanent impoundment pursuant to section 515(b)(8), the portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

*Ante*, p. 474.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in section 515: *Provided, however*, That no bond shall be fully released until all reclamation requirements of this Act are fully met.

Notice of  
disapproval.

(d) If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

Notice to  
municipality.

(e) When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority shall notify

the municipality in which a surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release from bond to the regulatory authority within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the regulatory authority shall inform all the interested parties, of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the regulatory authority in a newspaper of general circulation in the locality for two consecutive weeks, and shall hold a public hearing in the locality of the surface coal mining operation proposed for bond release or at the State capital at the option of the objector, within thirty days of the request for such hearing.

Written  
objections.

Hearing.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the regulatory authority pursuant to this section, the regulatory authority may establish an informal conference as provided in section 513 to resolve such written objections.

(h) For the purpose of such hearing the regulatory authority shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this Act shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

Records.

#### CITIZEN SUITS

SEC. 520. (a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act—

Civil action.  
30 USC 1270.

(1) against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this Act or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this title; or

(2) against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this Act which is not discretionary with the Secretary or with the appropriate State regulatory authority.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties.

Jurisdiction.

## (b) No action may be commenced—

(1) under subsection (a) (1) of this section—

Notice.

(A) prior to sixty days after the plaintiff has given notice in writing of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator; or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this Act, or any rule, regulation, order, or permit issued pursuant to this Act, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

Venue.

(c) (1) Any action respecting a violation of this Act or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

28 USC app.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief (including relief against the Secretary or the appropriate State regulatory authority).

(f) Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under State Workmen's Compensation laws.

## ENFORCEMENT

Notice.  
30 USC 1271.Federal  
inspection.

SEC. 521. (a) (1) Whenever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately

order Federal inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Secretary is a result of a previous Federal inspection of such surface coal mining operation. The ten-day notification period shall be waived when the person informing the Secretary provides adequate proof that an imminent danger of significant environmental harm exists and that the State has failed to take appropriate action. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

Waiver.

Notice.

(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a) (5) of this section. Where the Secretary finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the Secretary shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the Secretary deems necessary to abate the imminent danger or the significant environmental harm.

Cessation order.

Affirmative obligations, imposition.

(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 502, or section 504 (b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act; but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing.

Notice and hearing.

*Ante*, p. 458.*Ante*, p. 471.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the Secretary or his authorized representative, the Secretary or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated, or until modified, vacated, or terminated by the Secretary or

Cessation order.

his authorized representative pursuant to subparagraph (a)(5) of this section. In the order of cessation issued by the Secretary under this subsection, the Secretary shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

Permits,  
suspension or  
revocation.  
*Ante*, p. 468.  
*Ante*, p. 471.

(4) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 502 or section 504 or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the Secretary or his authorized representative also find that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Act or any permit conditions, or that such violations are willfully caused by the permittee, the Secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the Secretary shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Secretary or his authorized representative shall forthwith suspend or revoke the permit.

Hearing.

Notices and  
orders, contents.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs: *Provided*, That any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

Expiration date.  
Hearing.

Inadequate State  
enforcement.  
Notice and  
hearing.

(b) Whenever on the basis of information available to him, the Secretary has reason to believe that violations of all or any part of an approved State program result from a failure of the State to enforce such State program or any part thereof effectively, he shall after public notice and notice to the State, hold a hearing thereon in the State within thirty days of such notice. If as a result of said hearing the Secretary finds that there are violations and such violations result from a failure of the State to enforce all or any part of the State program effectively, and if he further finds that the State has not adequately demonstrated its capability and intent to enforce such State program, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this Act, the Secretary shall enforce, in the manner provided by this Act, any permit condition required under this Act, shall issue new or revised permits in accordance with

requirements of this Act, and may issue such notices and orders as are necessary for compliance therewith: *Provided*, That in the case of a State permittee who has met his obligations under such permit and who did not willfully secure the issuance of such permit through fraud or collusion, the Secretary shall give the permittee a reasonable time to conform ongoing surface mining and reclamation to the requirements of this Act before suspending or revoking the State permit.

(c) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent (A) violates or fails or refuses to comply with any order or decision issued by the Secretary under this Act, or (B) interferes with, hinders, or delays the Secretary or his authorized representatives in carrying out the provisions of this Act, or (C) refuses to admit such authorized representative to the mine, or (D) refuses to permit inspection of the mine by such authorized representative, or (E) refuses to furnish any information or report requested by the Secretary in furtherance of the provisions of this Act, or (F) refuses to permit access to, and copying of, such records as the Secretary determines necessary in carrying out the provisions of this Act. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended. Any relief granted by the court to enforce an order under clause (A) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

(d) As a condition of approval of any State program submitted pursuant to section 503 of this Act, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

#### DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

SEC. 522. (a)(1) To be eligible to assume primary regulatory authority pursuant to section 503, each State shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in paragraphs (2) and (3) of this subsection but such designation shall not prevent the mineral exploration pursuant to the Act of any area so designated.

(2) Upon petition pursuant to subsection (c) of this section, the State regulatory authority shall designate an area as unsuitable for all or certain types of surface coal mining operations if the State regulatory authority determines that reclamation pursuant to the requirements of this Act is not technologically and economically feasible.

(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will—

Civil action.

Jurisdiction.  
Temporary  
restraining  
orders.  
28 USC app.

Sanctions.  
*Ante*, p. 470.

State planning  
process,  
establishment.  
30 USC 1272.

(A) be incompatible with existing State or local land use plans or programs; or

(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include area subject to frequent flooding and areas of unstable geology.

State process,  
requirements.

(4) To comply with this section, a State must demonstrate it has developed or is developing a process which includes—

(A) a State agency responsible for surface coal mining lands review;

(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of surface coal mining operations;

(C) a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

Notice and  
hearing.

(D) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(5) Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels.

Savings  
provision.

(6) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on the date of enactment of this Act or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

Federal lands,  
review.

(b) The Secretary shall conduct a review of the Federal lands to determine, pursuant to the standards set forth in paragraphs (2) and (3) of subsection (a) of this section, whether there are areas on Federal lands which are unsuitable for all or certain types of surface coal mining operations: *Provided, however,* That the Secretary may permit surface coal mining on Federal lands prior to the completion of this review. When the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface coal mining operations, he shall withdraw such area or condition any mineral leasing or mineral entries in a manner so as to limit surface coal mining operations on such area. Where a Federal program has been implemented in a State pursuant to section 504, the Secretary shall implement a process for designation of areas unsuitable for surface coal mining for non-Federal lands within such State and such process shall incorporate the standards and procedures of this section. Prior to designating Federal lands unsuitable for such mining, the Secretary shall consult with the appropriate State and local agencies.

Area withdrawal.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the

Petition.

Notice and  
hearing.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the

locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefore. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

Intervention.

Decision.

(d) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

Statement.

(e) After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted—

Certain Federal, public and private mining, prohibition.

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

16 USC 1276.

(2) on any Federal lands within the boundaries of any national forest: *Provided, however,* That surface coal mining operations may be permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and—

(A) surface operations and impacts are incident to an underground coal mine; or

(B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface mining is in compliance with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1975, the National Forest Management Act of 1976, and the provisions of this Act: *And provided further,* That no surface coal mining operations may be permitted within the boundaries of the Custer National Forest;

16 USC 528 note.  
30 USC 181 note.  
16 USC 1600 note.

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

Notice and hearing.

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred

feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

## FEDERAL LANDS

Program  
implementation.  
30 USC 1273.

Post, p. 523.

30 USC 201.

Contracts.

States,  
cooperative  
agreement.

Ante, p. 468.

SEC. 523. (a) No later than one year after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: *Provided*, That except as provided in section 710 the provisions of this Act shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program: *Provided*, That the Secretary shall retain his duties under sections 2(a), (2)(B) and 2(a)(3) of the Federal Mineral Leasing Act, as amended, and shall continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with section 522(b) of this title.

(b) The requirements of this Act and the Federal lands program or an approved State program for State regulation of surface coal mining on Federal lands under subsection (c), whichever is applicable, shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface coal mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal lands program to deal with changing conditions or changed technology, and to require any surface mining and reclamation operations to conform with the requirements of this Act and the regulations issued pursuant to this Act.

(c) Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act. States with cooperative agreements existing on the date of enactment of this Act, may elect to continue regulation on Federal lands within the State, prior to approval by the Secretary of their State program, or imposition of a Federal program, provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 502 of this Act. Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands, to designate certain Federal lands as unsuitable for surface coal mining pursuant to section 522 of this Act, or to regulate other activities taking place on Federal lands.

(d) The Secretary shall develop a program to assure that with respect to the granting of permits, leases, or contracts for coal owned by the United States, that no class of purchasers of the mined coal shall be unreasonably denied purchase thereof.

## PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS

SEC. 524. Any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this Act shall comply with the provisions of title V.

Compliance.  
30 USC 1274.

## REVIEW BY SECRETARY

SEC. 525. (a) (1) A permittee issued a notice or order by the Secretary pursuant to the provisions of subparagraphs (a) (2) and (3) of section 521 of this title, or pursuant to a Federal program or the Federal lands program or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Secretary for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

30 USC 1275.

Investigation.  
Hearing.

(2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

Notice.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of subparagraph (a) (2) or (a) (3) of section 521 of this title, the Secretary shall issue the written decision within thirty days of the receipt of the application for review, unless temporary relief has been granted by the Secretary pursuant to subparagraph (c) of this section or by the court pursuant to subparagraph (c) of section 526 of this title.

Findings of fact.  
Decision.

(c) Pending completion of the investigation and hearing required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any notice or order issued under section 521 of this title, a Federal program or the Federal lands program together with a detailed statement giving reasons for granting such relief. The Secretary shall issue an order or decision granting or denying such relief expeditiously: *Provided*, That where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to subparagraph (a) (2) or (a) (3) of section 521 of this title, the order or decision on such a request shall be issued within five days of its receipt. The Secretary may grant such relief, under such conditions as he may prescribe, if—

Temporary relief.

Order or decision.

- Hearing.** (1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
- (2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to him; and
- (3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.
- Notice and hearing.** (d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 521, the Secretary shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Within sixty days following the public hearing, the Secretary shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the Secretary revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the Secretary, or the Secretary shall declare as forfeited the performance bonds for the operation.
- Decision.**
- Costs, assessment.** (e) Whenever an order is issued under this section, or as a result of any administrative proceeding under this Act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings, deems proper.

## JUDICIAL REVIEW

- 30 USC 1276. **Sec. 526.** (a) (1) Any action of the Secretary to approve or disapprove a State program or to prepare or promulgate a Federal program pursuant to this Act shall be subject to judicial review by the United States District Court for the District which includes the capital of the State whose program is at issue. Any action by the Secretary promulgating national rules or regulations including standards pursuant to sections 501, 515, 516, and 523 shall be subject to judicial review in the United States District Court for the District of Columbia Circuit. Any other action constituting rulemaking by the Secretary shall be subject to judicial review only by the United States District Court for the District in which the surface coal mining operation is located. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed in the appropriate Court within sixty days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such petition may be made by any person who participated in the administrative proceedings and who is aggrieved by the action of the Secretary.
- Petition.** (2) Any order or decision issued by the Secretary in a civil penalty proceeding or any other proceeding required to be conducted pursuant to 5 U.S.C. § 554 (1970) shall be subject to judicial review on or before 30 days from the date of such order or decision in accordance with subsection (b) of this section in the United States District Court for
- Ante*, pp. 467, 486, 495.

the district in which the surface coal mining operation is located. In the case of a proceeding to review an order or decision issued by the Secretary under the penalty section of this Act, the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment. This availability of review established in this subsection shall not be construed to limit the operations of rights established in Section 520.

Jurisdiction.

(b) The court shall hear such petition or complaint solely on the record made before the Secretary. Except as provided in subsection (a), the findings of the Secretary if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

Temporary relief.

(c) In the case of a proceeding to review any order or decision issued by the Secretary under this Act, including an order or decision issued pursuant to subparagraph (c) or (d) of section 525 of this title pertaining to any order issued under subparagraph (a) (2), (a) (3), or (a) (4) of section 521 of this title for cessation of coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if—

Notice and hearing.

(1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(3) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(d) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the Secretary.

(e) Action of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law, but the availability of such review shall not be construed to limit the operation of the rights established in section 520 except as provided therein.

#### SPECIAL BITUMINOUS COAL MINES

Sec. 527. (a) The regulatory authority is authorized to issue separate regulations for those special bituminous coal surface mines located west of the 100th meridian west longitude which meet the following criteria:

Regulations.  
30 USC 1277.

(1) the excavation of the specific mine pit takes place on the same relatively limited site for an extended period of time;

(2) the excavation of the specific mine pit follows a coal seam having an inclination of fifteen degrees or more from the horizontal, and continues in the same area proceeding downward with lateral expansion of the pit necessary to maintain stability or as necessary to accommodate the orderly expansion of the total mining operation;

(3) the excavation of the specific mine pit involves the mining of more than one coal seam and mining has been initiated on the deepest coal seam contemplated to be mined in the current operation;

(4) the amount of material removed is large in proportion to the surface area disturbed;

(5) there is no practicable alternative method of mining the coal involved;

(6) there is no practicable method to reclaim the land in the manner required by this Act; and

(7) the specific mine pit has been actually producing coal since January 1, 1972, in such manner as to meet the criteria set forth in this section, and, because of past duration of mining, is substantially committed to a mode of operation which warrants exceptions to some provisions of this title.

New bituminous coal mines.

(b) Such separate regulations shall also contain a distinct part to cover and pertain to new bituminous coal surface mines which may be developed after the date of enactment of this Act on lands immediately adjacent to lands upon which are located special bituminous mines existing on January 1, 1972. Such new mines shall meet the criteria of section 527(a) except for subparagraphs (3) and (7), and all requirements of State law, notwithstanding in whole or part the regulations issued pursuant to subsection (c) of this section. In the event of an amendment or revision to the State's regulatory program, regulations, or decisions made thereunder governing such mines, the Secretary shall issue such additional regulations as necessary to meet the purposes of this Act.

(c) Such alternative regulations may pertain only to the standards governing onsite handling of spoils, elimination of depressions capable of collecting water, creation of impoundments, and regrading to the approximate original contour and shall specify that remaining highwalls are stable. All other performance standards in this title shall apply to such mines.

#### SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT

30 USC 1278.

SEC. 528. The provisions of this Act shall not apply to any of the following activities:

(1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(2) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less; and

(3) the extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority.

#### ANTHRACITE COAL MINES

Regulations.  
30 USC 1279.

SEC. 529. (a) The Secretary is hereby authorized to and shall issue separate regulations according to time schedules established in the Act for anthracite coal surface mines, if such mines are regulated by environmental protection standards of the State in which they are located. Such alternative regulations shall adopt, in each instance, the environmental protection provisions of the State regulatory program in existence at the date of enactment of this Act in lieu of sections 515 and 516. Provisions of sections 509 and 519 are applicable except for specified bond limits and period of revegetation responsibility. All other provisions of this Act apply and the regulation issued by the Secretary of Interior for each State anthracite regulatory program shall so reflect: *Provided, however*, That upon amendment of a State's regulatory program for anthracite mining or regulations thereunder in force in lieu of the above-cited sections of this Act, the Secretary shall issue such additional regulations as necessary to meet the purposes of this Act.

*Ante*, p. 486.  
*Ante*, p. 495.  
*Ante*, pp. 479,  
501.

(b) The Secretary of Interior shall report to Congress biennially, commencing on December 31, 1977, as to the effectiveness of such State anthracite regulatory programs operating in conjunction with this Act with respect to protecting the environment and such reports shall include those recommendations the Secretary deems necessary for program changes in order to better meet the environmental protection objectives of this Act.

Biennial report to Congress.

## TITLE VI—DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING

### DESIGNATION PROCEDURES

SEC. 601. (a) With respect to Federal lands within any State, the Secretary of Interior may, and if so requested by the Governor of such State shall, review any area within such lands to assess whether it may be unsuitable for mining operations for minerals or materials other than coal, pursuant to the criteria and procedures of this section.

Review.  
30 USC 1281.

(b) An area of Federal land may be designated under this section as unsuitable for mining operations if (1) such area consists of Federal land of a predominantly urban or suburban character, used primarily for residential or related purposes, the mineral estate of which remains in the public domain, or (2) such area consists of Federal land where mining operations would have an adverse impact on lands used primarily for residential or related purposes.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the Secretary to seek exclusion of an area from mining operations pursuant to this section or the redesignation of an area or part thereof as suitable for such operations. Such petition shall contain allegations of fact with supporting evidence which would tend to substantiate the allegations. The petitioner shall be granted a hearing within a reasonable time and finding with reasons therefor upon the matter of their petition. In any instance where a Governor requests the Secretary to review an area, or where the Secretary finds the national interest so requires, the Secretary may temporarily withdraw the area to be reviewed from mineral entry or leasing pending such review: *Provided, however,* That such temporary withdrawal be ended as promptly as practicable and in no event shall exceed two years.

Exclusion  
petition.

Hearing.

Temporary land  
withdrawal.

(d) In no event is a land area to be designated unsuitable for mining operations under this section on which mining operations are being conducted prior to the holding of a hearing on such petition in accordance with subsection (c) hereof. Valid existing rights shall be preserved and not affected by such designation. Designation of an area as unsuitable for mining operations under this section shall not prevent subsequent mineral exploration of such area, except that such exploration shall require the prior written consent of the holder of the surface estate, which consent shall be filed with the Secretary. The Secretary may promulgate, with respect to any designated area, regulations to minimize any adverse effects of such exploration.

Rights,  
preservation.

Regulations.

(e) Prior to any designation pursuant to this section, the Secretary shall prepare a detailed statement on (i) the potential mineral resources of the area, (ii) the demand for such mineral resources, and (iii) the impact of such designation or the absence of such designation on the environment, economy, and the supply of such mineral resources.

Statement.

(f) When the Secretary designates an area of Federal lands as unsuitable for all or certain types of mining operations for minerals

Area withdrawal.

and materials other than coal pursuant to this section he may withdraw such area from mineral entry or leasing, or condition such entry or leasing so as to limit such mining operations in accordance with his determination, if the Secretary also determines, based on his analysis pursuant to subsection 601(e), that the benefits resulting from such designation would be greater than the benefits to the regional or national economy which could result from mineral development of such area.

Appeal.

(g) Any party with a valid legal interest who has appeared in the proceedings in connection with the Secretary's determination pursuant to this section and who is aggrieved by the Secretary's decision (or by his failure to act within a reasonable time) shall have the right of appeal for review by the United States district court for the district in which the pertinent area is located.

## TITLE VII—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

### DEFINITIONS

30 USC 1291.

SEC. 701. For the purposes of this Act—

(1) "alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and wind-blown deposits;

(2) "approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with section 515(b)(8) of this Act;

Ante, p. 486.

(3) "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

(4) "Federal lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands; *Provided*, That for the purposes of this Act lands or mineral interests east of the one hundredth meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority shall not be subject to sections 714 (Surface Owner Protection) and 715 (Federal Lessee Protection) of this Act.

(5) "Federal lands program" means a program established by the Secretary pursuant to section 523 to regulate surface coal mining and reclamation operations on Federal lands;

(6) "Federal program" means a program established by the Secretary pursuant to section 504 to regulate surface coal mining

Ante, p. 471.

and reclamation operations on lands within a State in accordance with the requirements of this Act;

(7) "fund" means the Abandoned Mine Reclamation Fund established pursuant to section 401;

*Ante*, p. 456.

(8) "imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;

(9) "Indian lands" means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe;

(10) "Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the Secretary;

(11) "lands within any State" or "lands within such State" means all lands within a State other than Federal lands and Indian lands;

(12) "Office" means the Office of Surface Mining Reclamation and Enforcement established pursuant to title II;

*Ante*, p. 449.

(13) "operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in any one location;

(14) "other minerals" means clay, stone, sand, gravel, metaliferous and nonmetaliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(15) "permit" means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program;

(16) "permit applicant" or "applicant" means a person applying for a permit;

(17) "permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by section 509 of this Act and shall be readily identifiable by appropriate markers on the site;

*Ante*, p. 479.

(18) "permittee" means a person holding a permit;

(19) "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(20) the term "prime farmland" shall have the same meaning as that previously prescribed by the Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and

which historically have been used for intensive agricultural purposes, and as published in the Federal Register.

(21) "reclamation plan" means a plan submitted by an applicant for a permit under a State program or Federal program which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to section 508;

(22) "regulatory authority" means the State regulatory authority where the State is administering this Act under an approved State program or the Secretary where the Secretary is administering this Act under a Federal program;

(23) "Secretary" means the Secretary of the Interior, except where otherwise described;

(24) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(25) "State program" means a program established by a State pursuant to section 503 to regulate surface coal mining and reclamation operations, on lands within such State in accord with the requirements of this Act and regulations issued by the Secretary pursuant to this Act;

(26) "State regulatory authority" means the department or agency in each State which has primary responsibility at the State level for administering this Act;

(27) "surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations after the date of enactment of this Act;

(28) "surface coal mining operations" means—

(A) activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: *Provided, however,* That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16% per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 512 of this Act; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited struc-

*Ante*, p. 478.

Requirements.  
Regulations.  
*Ante*, p. 470.

*Ante*, p. 495.

*Ante*, p. 483.

tures, facilities, or other property or materials on the surface, resulting from or incident to such activities; and

(29) "unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care;

(30) "lignite coal" means consolidated lignitic coal having less than 8,300 British thermal units per pound, moist and mineral matter free;

(31) the term "coal laboratory", as used in title VIII, means a university coal research laboratory established and operated pursuant to a designation made under section 801 of this Act;

(32) the term "institution of higher education" as used in titles VIII and IX, means any such institution as defined by section 1201(a) of the Higher Education Act of 1968.

20 USC 1141.

## OTHER FEDERAL LAWS

SEC. 702. (a) Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to—

30 USC 1292.

(1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721-740).

(2) The Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742).

30 USC 801 note.

(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. 1151-1175), the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

(4) The Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(5) The Solid Waste Disposal Act (42 U.S.C. 3251-3259).

(6) The Refuse Act of 1899 (33 U.S.C. 407).

(7) The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661-666c).

(8) The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

(b) Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations on land under their jurisdiction.

(c) To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this Act.

Cooperation.

(d) Approval of the State programs, pursuant to section 503(b), promulgation of Federal programs, pursuant to section 504, and implementation of the Federal lands programs, pursuant to section 523 of this Act, shall not constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Adoption of regulations under section 501(b) shall

*Ante*, p. 470.*Ante*, p. 471.*Ante*, p. 467.

constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

## EMPLOYEE PROTECTION

Retaliatory  
practices,  
prohibition.  
30 USC 1293.

SEC. 703. (a) No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

Review.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent.

Investigation.  
Notice and  
hearing.

Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation the Secretary shall make findings of fact. If he finds that a violation did occur, he shall issue a decision incorporating therein his findings and an order requiring the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he will issue a finding. Orders issued by the Secretary under this subsection shall be subject to judicial review in the same manner as orders and decisions of the Secretary are subject to judicial review under this Act.

Findings of fact,  
report.

Judicial review.

Costs,  
assessment.

(c) Whenever an order is issued under this section to abate any violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.

## PROTECTION OF GOVERNMENT EMPLOYEES

Penalty.  
30 USC 1294.

SEC. 704. Section 1114, title 18, United States Code, is hereby amended by adding the words "or of the Department of the Interior" after the words "Department of Labor" contained in that section. Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the Secretary or any of his agents in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

## GRANTS TO THE STATES

30 USC 1295.

SEC. 705. (a) The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing,

administering, and enforcing State programs under this Act. Except as provided in subsection (c) of this section, such grants shall not exceed 80 per centum of the total costs incurred during the first year, 60 per centum of total costs incurred during the second year, and 50 per centum of the total costs incurred during each year thereafter.

(b) The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include—

State programs,  
assistance.

(1) technical assistance and training including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface coal mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface coal mining and reclamation operations and to the development, administration, and enforcement of State programs concerning such operations.

(c) If, in accordance with section 523(d) of this Act, a State elects to regulate surface coal mining and reclamation operations on Federal lands, the Secretary may increase the amount of the annual grants under subsection (a) of this section by an amount which he determines is approximately equal to the amount the Federal Government would have expended for such regulation if the State had not made such election.

Annual grants,  
increase.

#### ANNUAL REPORT

SEC. 706. The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this Act. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this Act.

Annual report to  
President and  
Congress.  
30 USC 1296.

#### SEVERABILITY

SEC. 707. If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

30 USC 1297.

#### ALASKAN SURFACE COAL MINE STUDY

SEC. 708. (a) The Secretary is directed to contract to such extent or in such amounts as are provided in advance in appropriation Acts with the National Academy of Sciences-National Academy of Engineering for an in-depth study of surface coal mining conditions in the State of Alaska in order to determine which, if any, of the provisions of this Act should be modified with respect to surface coal mining operations in Alaska.

Contract.  
30 USC 1298.

(b) The Secretary shall report on the findings of the study to the President and Congress no later than two years after the date of enactment of this Act.

Report to  
President and  
Congress.

(c) The Secretary shall include in his report a draft of legislation to implement any changes recommended to this Act.

Draft legislation.

## Modifications.

(d) Until one year after the Secretary has made this report to the President and Congress, or three years after the date of enactment of this Act, whichever comes first, the Secretary is authorized to modify the applicability of any environmental protection provision of this Act, or any regulation issued pursuant thereto, to any surface coal mining operation in Alaska from which coal has been mined during the year preceding enactment of this Act if he determines that it is necessary to insure the continued operation of such surface coal mining operation. The Secretary may exercise this authority only after he has (1) published notice of proposed modification in the Federal Register and in a newspaper of general circulation in the area of Alaska in which the affected surface coal mining operation is located, and (2) held a public hearing on the proposed modification in Alaska.

## Publication in Federal Register. Hearing.

## Interim regulations.

*Ante*, p. 467.

(e) In order to allow new mines in Alaska to continue orderly development, the Secretary is authorized to issue interim regulations pursuant to section 501(b) including those modifications to the environmental standards as required based on the special physical, hydrological and climatic conditions in Alaska but with the purpose of protecting the environment to an extent equivalent to those standards for the other coal regions.

## Appropriation authorization.

(f) There is hereby authorized to be appropriated for the purpose of this section \$250,000: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

## STUDY OF RECLAMATION STANDARDS FOR SURFACE MINING OF OTHER MINERALS

Contract.  
30 USC 1209.

SEC. 709. (a) The Chairman of the Council on Environmental Quality is directed to contract to such extent or in such amounts as are provided in appropriation Acts with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an in-depth study of current and developing technology for surface and open pit mining and reclamation for minerals other than coal designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation for minerals other than coal. The study shall—

- (1) assess the degree to which the requirements of this Act can be met by such technology and the costs involved;
- (2) identify areas where the requirements of this Act cannot be met by current and developing technology;
- (3) in those instances describe requirements most comparable to those of this Act which could be met, the costs involved, and the differences in reclamation results between these requirements and those of this Act; and
- (4) discuss alternative regulatory mechanisms designed to insure the achievement of the most beneficial postmining land use for areas affected by surface and open pit mining.

## Legislative recommendations, submission to President and Congress.

(b) The study together with specific legislative recommendations shall be submitted to the President and the Congress no later than eighteen months after the date of enactment of this Act: *Provided*, That, with respect to surface or open pit mining for sand and gravel the study shall be submitted no later than twelve months after the date of enactment of this Act: *Provided further*, That with respect to mining for oil shale and tar sands that a preliminary report shall be submitted no later than twelve months after the date of enactment of this Act.

(c) There are hereby authorized to be appropriated for the purpose of this section \$500,000: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

Appropriation authorization.

## INDIAN LANDS

SEC. 710. (a) The Secretary is directed to study the question of the regulation of surface mining on Indian lands which will achieve the purpose of this Act and recognize the special jurisdictional status of these lands. In carrying out this study the Secretary shall consult with Indian tribes. The study report shall include proposed legislation designed to allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of regulation of surface mining of coal on Indian lands.

Study report, submittal to Congress. 30 USC 1300.

Proposed legislation.

(b) The study report required by subsection (a) together with drafts of proposed legislation and the view of each Indian tribe which would be affected shall be submitted to the Congress as soon as possible but not later than January 1 1978.

(c) On and after one hundred and thirty-five days from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

Compliance.

*Ante*, p. 486.

(d) On and after thirty months from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by sections 507, 508, 509, 510, 515, 516, 517, and 519 of this Act and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

*Ante*, pp. 474, 478, 479, 480, 486, 495, 498, 501.

(e) With respect to leases issued after the date of enactment of this Act, the Secretary shall include and enforce terms and conditions in addition to those required by subsections (c) and (d) as may be requested by the Indian tribe in such leases.

(f) Any change required by subsection (c) or (d) of this section in the terms and conditions of any coal lease on Indian lands existing on the date of enactment of this Act, shall require the approval of the Secretary.

Terms and conditions.

(g) The Secretary shall provide for adequate participation by the various Indian tribes affected in the study authorized in this section and not more than \$700,000 of the funds authorized in section 712(a) shall be reserved for this purpose.

(h) The Secretary shall analyze and make recommendations regarding the jurisdictional status of Indian Lands outside the exterior boundaries of Indian reservations: *Provided*, That nothing in this Act shall change the existing jurisdictional status of Indian Lands.

## EXPERIMENTAL PRACTICES

SEC. 711. In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the regulatory authority with approval by the Secretary may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 515 and 516 of this Act. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operations approved for particular land-use or other purposes are not larger or

30 USC 1301.

more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

#### AUTHORIZATION OF APPROPRIATIONS

50 USC 1302.

SEC. 712. There is authorized to be appropriated to the Secretary for the purposes of this Act the following sums; and all such funds appropriated shall remain available until expended:

*Ante*, p. 468.

(a) For the implementation and funding of sections 502, 523, and 710, there are authorized to be appropriated to the Secretary of the Interior the sum of \$10,000,000 for the fiscal year ending September 30, 1978, and \$10,000,000 for each of the two succeeding fiscal years.

*Ante*, p. 474.

*Ante*, p. 456.

(b) Commencing in the fiscal year ending September 30, 1978, and for each fiscal year for a period of fifteen fiscal years thereafter, for the implementation and funding of section 507(c) there are authorized to be appropriated sums reserved by section 401(b)(1) for the purposes of section 507(c) and such additional sums, for the fiscal year ending September 30, 1978, and for each fiscal year for a period of fifteen fiscal years thereafter, are authorized to be appropriated as may be necessary to provide an amount not to exceed \$10,000,000 to carry out the purposes of section 507(c).

(c) For the implementation and funding of section 705 and for the administrative and other purposes of this Act, except as otherwise provided for in this Act, authorization is provided for the sum of \$20,000,000 for the fiscal year ending September 30, 1978, and \$30,000,000 for each of the two succeeding fiscal years and such funds that are required thereafter.

Limitation.

(d) In order that the implementation of the requirements of this Act may be initiated in a timely and orderly manner, the Secretary is authorized, subject to the approval of the appropriation Committees of the House and of the Senate, to utilize not to exceed \$2,000,000 of the appropriations otherwise available to him for the fiscal year ending September 30, 1977, for the administration and other purposes of the Act.

#### COORDINATION OF REGULATORY AND INSPECTION ACTIVITIES

30 USC 1303.

SEC. 713. (a) The President shall, to the extent appropriate, and in keeping with the particular enforcement requirements of each Act referred to herein, insure the coordination of regulatory and inspection activities among the departments, agencies, and instrumentalities to which such activities are assigned by this Act, by the Clean Air Act, by the Water Pollution Control Act, by the Department of Energy Organization Act, and by existing or subsequently enacted Federal mine safety and health laws, except that no such coordination shall be required with respect to mine safety and health inspections, advance notice of which is or may be prohibited by existing or subsequently enacted Federal mine safety and health laws.

42 USC 1857

note.

33 USC 1151

note.

Presidential  
authority.

(b) The President may execute the coordination required by this section by means of an Executive order, or by any other mechanism he determines to be appropriate.

#### SURFACE OWNER PROTECTION

30 USC 1304.

SEC. 714. (a) The provisions of this section shall apply where coal owned by the United States under land the surface rights to which are

owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

(b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Lands Leasing Act of 1920, as amended.

(c) The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent. Valid written consent given by any surface owner prior to the enactment of this Act shall be deemed sufficient for the purposes of complying with this section.

(d) In order to minimize disturbance to surface owners from surface coal mining of Federal coal deposits and to assist in the preparation of comprehensive land-use plans required by section 2(a) of the Mineral Lands Leasing Act of 1920, as amended, the Secretary shall consult with any surface owner whose land is proposed to be included in a leasing tract and shall ask the surface owner to state his preference for or against the offering of the deposit under his land for lease. The Secretary shall, in his discretion but to the maximum extent practicable, refrain from leasing coal deposits for development by methods other than underground mining techniques in those areas where a significant number of surface owners have stated a preference against the offering of the deposits for lease.

(e) For the purpose of this section the term "surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who—

(1) hold legal or equitable title to the land surface;

(2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and

(3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of the consent.

In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.

(f) This section shall not apply to Indian lands.

(g) Nothing in this section shall be construed as increasing or diminishing any property rights by the United States or by any other landowner.

#### FEDERAL LESSEE PROTECTION

SEC. 715. In those instances where the coal proposed to be mined by surface coal mining operations is owned by the Federal Government and the surface is subject to a lease or a permit issued by the Federal Government, the application for a permit shall include either:

(1) the written consent of the permittee or lessee of the surface lands involved to enter and commence surface coal mining operations on such land, or in lieu thereof;

(2) evidence of the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the permittee or lessee of the surface lands involved to secure payment of any damages to the surface estate which the operations will cause to the crops, or to the tangible improvements

30 USC 201.  
Consent.

"Surface owner."

Permit  
applications,  
contents.  
30 USC 1305.

of the permittee or lessee of the surface lands as may be determined by the parties involved, or as determined and fixed in an action brought against the operator or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation under this Act.

## ALASKA COAL

30 USC 1306.

SEC. 716. Nothing in this Act shall be construed as increasing or diminishing the rights of any owner of coal in Alaska to conduct or authorize surface coal mining operations for coal which has been or is hereafter conveyed out of Federal ownership to the State of Alaska or pursuant to the Alaska Native Claims Settlement Act: *Provided*, That such surface coal mining operations meet the requirements of the Act.

43 USC 1604  
note.

## WATER RIGHTS AND REPLACEMENT

30 USC 1307.

SEC. 717. (a) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.

(b) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such surface coal mine operation.

## ADVANCE APPROPRIATIONS

30 USC 1308.

SEC. 718. Notwithstanding any other provision of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

## CERTIFICATION AND TRAINING OF BLASTERS

Regulations.  
30 USC 1309.  
*Ante*, p. 470.

SEC. 719. In accordance with this Act, the Secretary of the Interior (or the approved State regulatory authority as provided for in section 503 of this Act) shall promulgate regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

TITLE VIII—UNIVERSITY COAL RESEARCH  
LABORATORIES

## ESTABLISHMENT OF UNIVERSITY COAL RESEARCH LABORATORIES

30 USC 1311.

SEC. 801. (a) The Administrator, Energy Research and Development Administration (hereafter referred to as "Administrator" in this title), after consultation with the National Academy of Engineering, is authorized and directed to designate ten institutions of higher education at which university coal research laboratories will be established and operated.

Criteria.

(b) In making designations under this section, the Administrator shall consider the following criteria:

(1) The institution of higher education shall be located in a State with abundant coal reserves.

(2) The institution of higher education shall have experience in coal research, expertise in several areas of coal research, and potential or currently active, outstanding programs in coal research.

(3) The institution of higher education has the capacity to establish and operate the coal laboratories to be assisted under this title.

(c) Not more than one coal laboratory established pursuant to this title shall be located in a single State and at least one coal laboratory shall be established within each of the major coal provinces recognized by the Bureau of Mines, including Alaska.

(d) The Administrator shall establish a period, not in excess of ninety days after the date of enactment of this Act, for the submission of applications for designation under this section. Any institution of higher education desiring to be designated under this title shall submit an application to the Administrator in such form, at such time, and containing or accompanied by such information as the Administrator may reasonably require. Each application shall—

Application.

(1) describe the facilities to be established for coal energy resources and conversion research and research on related environmental problems including facilities for interdisciplinary academic research projects by the combined efforts of specialists such as mining engineers, mineral engineers, geochemists, mineralogists, mineral economists, fuel scientists, combustion engineers, mineral preparation engineers, coal petrographers, geologists, chemical engineers, civil engineers, mechanical engineers, and ecologists;

Contents.

(2) set forth a program for the establishment of a test laboratory for coal characterization which, in addition, may be used as a site for the exchange of coal research activities by representatives of private industry engaged in coal research and characterization;

(3) set forth a program for providing research and development activities for students engaged in advanced study in any discipline which is related to the development of adequate energy supplies in the United States. The research laboratory shall be associated with an ongoing educational and research program on extraction and utilization of coal.

(e) The Administrator shall designate the ten institutions of higher education under this section not later than ninety days after the date on which such applications are to be submitted.

#### FINANCIAL ASSISTANCE

SEC. 802. (a) The Administrator is authorized to make grants to any institution of higher education designated under section 801 to pay the Federal share of the cost of establishing (including the construction of such facilities as may be necessary) and maintaining a coal laboratory.

Grants.  
30 USC 1312.

(b) Each institution of higher education designated pursuant to section 801 shall submit an application to the Administrator. Each such application shall—

Application.  
Contents.

(1) set forth the program to be conducted at the coal laboratory which includes the purposes set forth in section 801(d);

(2) provide assurances that the university will pay from non-Federal sources the remaining costs of carrying out the program set forth;

(3) provide such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for Federal funds received under this title;

Report.

(4) provide for making an annual report which shall include a description of the activities conducted at the coal laboratory and an evaluation of the success of such activities, and such other necessary reports in such form and containing such information as the Administrator may require, and for keeping such records and affording such access thereto as may be necessary to assure the correctness and verification of such reports; and

(5) set forth such policies and procedures as will insure that Federal funds made available under this section for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available for the purposes of the activities described in subsections 801(d) (1), (2), and (3), and in no case supplant such funds.

#### LIMITATION ON PAYMENTS

30 USC 1313.

SEC. 803. (a) No institutions of higher education may receive more than \$4,000,000 for the construction of its coal research laboratory, including initially installed fixed equipment, nor may it receive more than \$1,500,000 for initially installed movable equipment, nor may it receive more than \$500,000 for new program startup expenses.

(b) No institution of higher education may receive more than \$1,500,000 per year from the Federal Government for operating expenses.

#### PAYMENTS

30 USC 1314.

SEC. 804. (a) From the amounts appropriated pursuant to section 806, the Administrator shall pay to each institution of higher education having an application approved under this title an amount equal to the Federal share of the cost of carrying out that application. Such payments may be in installments, by way of reimbursement, or by way of advance with necessary adjustments on account of underpayments or overpayments.

Operating expenses, Federal share.

(b) The Federal share of operating expenses for any fiscal year shall not exceed 50 per centum of the cost of the operation of a coal research laboratory.

#### ADVISORY COUNCIL ON COAL RESEARCH

Establishment. Members.  
30 USC 1315.

SEC. 805. (a) There is established an Advisory Council on Coal Research which shall be composed of—

- (1) the Administrator, ERDA, who shall be Chairman;
- (2) the Director of the Bureau of Mines of the Department of the Interior;
- (3) the President of the National Academy of Sciences;
- (4) the President of the National Academy of Engineering;
- (5) the Director of the United States Geological Survey; and
- (6) six members appointed by the Administrator from among individuals who, by virtue of experience or training, are knowledgeable in the field of coal research and mining, and who are representatives of institutions of higher education, industrial users of coal and coal-derived fuels, the coal industry, mine workers,

nonindustrial consumer groups, and institutions concerned with the preservation of the environment.

(b) The Advisory Council shall advise the Administrator with respect to the general administration of this title, and furnish such additional advice as he may request.

(c) The Advisory Council shall make an annual report of its findings and recommendations (including recommendations for changes in the provisions of this title) to the President not later than December 31 of each calendar year. The President shall transmit each such report to the Congress.

Annual report to President, transmittal to Congress.

(d) (1) Members of the Council who are not regular officers or employees of the United States Government shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Administrator but not exceeding the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

Compensation and travel expenses.

(2) Members of the Council who are officers or employees of the Government shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties on the Council.

(e) Whenever a member of the Council appointed under clauses (1) through (5) is unable to attend a meeting, that member shall appoint an appropriate alternate to represent him for that meeting.

Meeting alternates.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 806. There are authorized to be appropriated not to exceed \$30,000,000 for the fiscal year ending September 30, 1979 (including the cost of construction, equipment, and startup expenses), and \$7,500,000 beginning with the fiscal year 1980 each fiscal year thereafter through the fiscal year ending June 30, 1983, to carry out the provisions of this title.

30 USC 1316.

### TITLE IX—ENERGY RESOURCE GRADUATE FELLOWSHIPS

#### PROGRAM AUTHORIZED

SEC. 901. (a) The Administrator ERDA (hereafter referred to as "Administrator" in this title), is authorized to award under the provisions of this title not to exceed one thousand fellowships for the fiscal year ending September 30, 1979, and each of the five succeeding fiscal years. Fellowships shall be awarded under the provisions of this title for graduate study and research in those areas of applied science and engineering that are related to the production, conservation, and utilization of fuels and energy. Fellowships shall be awarded to students in programs leading to master's degrees. Such fellowships may be awarded for graduate study and research at any institution of higher education, library, archive, or any other research center approved by the Administrator after consultation with the Commissioner of Education.

30 USC 1321.

(b) Such fellowships shall be awarded for such periods as the Administrator may determine, but not to exceed two years.

Term.

(c) In addition to the number of fellowships authorized to be awarded by subsection (a) of this section, the Administrator is authorized to award fellowships equal to the number previously awarded during any fiscal year under this title but vacated prior to the end of the period for which they were awarded; except that each fellowship awarded under this subsection shall be for such period of graduate work or research, not in excess of the remainder of the period for which the fellowship which it replaces was awarded as the Administrator may determine.

#### AWARDING OF FELLOWSHIPS

- 30 USC 1322. SEC. 902. Recipients of fellowships under this title shall be—
- (a) persons who have been accepted by an institution of higher education for graduate study leading to an advanced degree or for a professional degree, and
  - (b) persons who plan a career in the field of energy resources, production, or utilization.

#### DISTRIBUTION OF FELLOWSHIPS

- 30 USC 1323. SEC. 903. In awarding fellowships under the provisions of this title, the Administrator shall endeavor to provide equitable distribution of such fellowships throughout the Nation, except that the Administrator shall give special attention to institutions of higher education, libraries, archives, or other research centers which have a demonstrated capacity to offer courses of study or research in the field of energy resources and conservation and conversion and related disciplines. In carrying out his responsibilities under this section, the Administrator shall take into consideration the projected need for highly trained engineers and scientists in the field of energy sources.

#### STIPENDS AND INSTITUTIONS OF HIGHER EDUCATION ALLOWANCES

- 30 USC 1324. SEC. 904. (a) Each person awarded a fellowship under this title shall receive a stipend of not more than \$10,000 for each academic year of study. An additional amount of \$500 for each such calendar year of study shall be paid to such person on account of each of his dependents.
- (b) In addition to the amount paid to such person pursuant to subsection (a) there shall be paid to the institution of higher education at which each such person is pursuing his course of study, 100 per centum of the amount paid to such person less the amount paid on account of such person's dependents, to such person less any amount charged such person for tuition.

#### LIMITATION

- 30 USC 1325. SEC. 905. No fellowship shall be awarded under this title for study at a school or department of divinity. For the purpose of this section, the term "school or department of divinity" means an institution or department or branch of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation or to prepare them to teach theological subjects.

#### FELLOWSHIP CONDITIONS

- 30 USC 1326. SEC. 906. (a) A person awarded a fellowship under the provisions of this title shall continue to receive the payments provided in section 904(a) only during such periods as the Administrator finds that he is

maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, in an institution of higher education, and is not engaging in gainful employment other than part-time employment in teaching, research, or similar activities, approved by the Administrator.

(b) The Administrator shall require reports containing such information in such forms and to be filed at such times as he determines necessary from each person awarded a fellowship under the provisions of this title. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, library, archive, or other research center approved by the Administrator, stating that such person is making satisfactory progress in, and is devoting essentially full time to the research for which the fellowship was awarded.

Reports.

#### APPROPRIATIONS AUTHORIZED

SEC. 907. There are authorized to be appropriated \$11,000,000 for the fiscal year ending September 30, 1979, and for each of the five succeeding fiscal years. For payments for the initial awarding of fellowships awarded under this title, there are authorized to be appropriated for the fiscal year ending September 30, 1979, and for each of the five succeeding fiscal years, such sums as may be necessary in order that fellowships already awarded might be completed.

30 USC 1327.

#### RESEARCH AND DEMONSTRATION PROJECTS OF ALTERNATIVE COAL MINING TECHNOLOGIES

SEC. 908. (a) The Administrator is authorized to conduct and promote the coordination and acceleration of, research, studies, surveys, experiments, demonstration projects, and training relating to—

30 USC 1328.

(1) the development and application of coal mining technologies which provide alternatives to surface disturbance and which maximize the recovery of available coal resources, including the improvement of present underground mining methods, methods for the return of underground mining wastes to the mine void, methods for the underground mining of thick coal seams and very deep seams; and

(2) safety and health in the application of such technologies, methods, and means.

(b) In conducting the activities authorized by this section, the Administrator may enter into contracts with and make grants to qualified institutions, agencies, organizations, and persons.

Contracts.  
Grants.

(c) There are authorized to be appropriated to the Administrator, to carry out the purposes of this section, \$35,000,000 for each fiscal year beginning with the fiscal year 1979, and for each year thereafter for the next four years.

Appropriation  
authorization.

(d) At least sixty days before any funds are obligated for any research studies, surveys, experiments or demonstration projects to be conducted or financed under this Act in any fiscal year, the Administrator in consultation with the heads of other Federal agencies having the authority to conduct or finance such projects, shall determine and publish such determinations in the Federal Register that such projects are not being conducted or financed by any other Federal agency. On December 31 of each calendar year, the Secretary shall report to the Congress on the research studies, surveys, experiments or demonstration projects, conducted or financed under this Act, including, but not limited to, a statement of the nature and purpose of each project, the

Publication in  
Federal Register.Report to  
Congress.

Federal cost thereof, the identity and affiliation of the persons engaged in such projects, the expected completion date of the projects and the relationship of the projects to other such projects of a similar nature.

Information,  
availability to  
public.  
*Ante*, p. 454.

(e) Subject to the patent provisions of section 306(d) of this Act, all information and data resulting from any research studies, surveys, experiments, or demonstration projects conducted or financed under this Act shall be promptly made available to the public.

Approved August 3, 1977.

---

**LEGISLATIVE HISTORY:**

HOUSE REPORTS: No. 95-218 (Comm. on Interior and Insular Affairs) and No. 95-493 (Comm. of Conference).

SENATE REPORTS: No. 95-128 accompanying S. 7 (Comm. on Energy and Natural Resources) and No. 95-337 (Comm. on Conference).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Apr. 28, 29, considered and passed House,

May 19, S. 7 considered in Senate.

May 20, considered and passed Senate, amended, in lieu of S. 7.

July 20, Senate agreed to conference report.

July 21, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 32:

Aug. 3, Presidential statement.

○

# EXPLORATION ASSISTANCE

mica manganese quartz  
uranium monazite silver  
nickel sulphur asbestos  
graphite thorium talc  
corundum gold  
mica manganese quartz  
uranium monazite silver  
nickel sulphur asbestos  
graphite thorium talc  
mica manganese quartz



U.S. DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY  
OFFICE OF MINERAL EXPLORATION

# EXPLORATION ASSISTANCE

U.S. DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY  
OFFICE OF MINERALS EXPLORATION

## FOREWORD

The U. S. Geological Survey, through the Office of Minerals Exploration (OME), encourages exploration for certain minerals within the United States, its Territories, and Possessions. The program provides financial assistance to private industry on a participating basis.

This assistance is available to those who would not ordinarily undertake the proposed exploration at their sole expense and who are unable to obtain the necessary finances on reasonable terms from commercial sources. Assistance is not available to "grubstake" or finance prospecting expeditions.

Exploration may be conducted from the surface or underground, using recognized and sound procedures (including standard geophysical and geochemical methods) to obtain geological and mineralogical information in favorable areas.

An applicant for assistance must own, lease, or have an otherwise valid claim to the property he wishes to explore. A reasonable probability must exist for significant discovery of ore on the property, and the property and workings must be accessible for examination. The applicant must show that he has adequate funds to start the proposed work and to continue it until Governmental funds begin to arrive, because the Government's share of the costs is paid monthly only after a voucher for costs incurred the preceding month has been submitted and approved. Repayment to the Government is at the rate of 5 percent royalty on production from the property. There is no requirement to produce, and if there is no production, no repayment is required.

This pamphlet answers the questions most frequently asked by applicants. For further information, write to the Office of Minerals Exploration, U.S. Geological Survey, Washington, D. C. 20242, or contact the nearest OME field office. These offices are listed on the last page of this pamphlet.

## CONTENTS

ELIGIBLE MINERALS OR MINERAL PRODUCTS.....	4
ELIGIBLE APPLICANTS.....	5
APPLICATIONS FOR ASSISTANCE.....	7
EXPLORATION CONTRACTS.....	9
ALLOWABLE COSTS.....	12
PERFORMING THE WORK.....	14
REPORTS, ACCOUNTS, AND PAYMENTS BY THE GOVERNMENT... ..	15
REPAYING THE GOVERNMENT.....	16
OFFICE OF MINERALS EXPLORATION FIELD OFFICES .....	20

## ELIGIBLE MINERALS OR MINERAL PRODUCTS

1. **Q.** What minerals and mineral products are eligible for assistance under the OME program, and how much will the Government contribute?

**A.** The following are eligible for Government financial assistance of 50 percent of the allowable costs of exploration:

Asbestos	Kyanite (strategic)
Bauxite	Manganese
Beryllium	Mica (strategic)
Cadmium	Molybdenum
Chromite	Monazite
Cobalt	Nickel
Columbium	Quartz Crystal (piezoelectric)
Copper	Rare Earths
Corundum	Selenium
Diamond (industrial)	Sulphur
Fluorspar	Talc (block steatite)
Graphite (crucible flake)	Tellurium
Iron Ore	Thorium
	Uranium

The following are eligible for Government financial assistance of 75 percent of the allowable costs of exploration:

Antimony	Rutile
Bismuth	Silver
Gold	Tantalum
Mercury	Tin
Platinum Group Metals	

Combinations of the minerals or mineral products named above may be eligible for Government financial assistance of 62.5 percent of the allowable costs of exploration.

2. **Q.** How is the percentage of Government participation determined?

**A.** The Government's percentage of the total allowable costs of exploration is determined in accordance with the percentages specified in the mineral lists, and is indicated in each contract.

**3. Q. Are the eligible minerals and mineral products and the percentage of Government participation subject to change?**

**A.** Yes, as circumstances determine, but not without prior notice.

**4. Q. What percentage of cost will the Government contribute?**

**A.** The Government contribution to the total allowable costs of exploration specified by the terms of all contracts executed after September 11, 1967, is a maximum of 75 percent for antimony, bismuth, gold, mercury, platinum group metals, rutile, silver, tantalum, and tin, and a maximum of 50 percent for all other eligible mineral commodities listed in the OME regulations.

Combinations of the mineral or metal commodities in the different percentage participation groups may be eligible for Government financial assistance of 62.5 percent of the allowable costs of exploration.

#### ELIGIBLE APPLICANTS

**5. Q. How can I become eligible for exploration assistance?**

**A.** To be eligible for exploration assistance, you must

- (1) Have a sufficient interest in property which can qualify for exploration for one or more of the eligible minerals or mineral products;
- (2) Furnish evidence that funds for the exploration are not available from banking institutions or other commercial sources of credit on reasonable terms; and
- (3) Certify that you would not ordinarily undertake the proposed exploration under current conditions and circumstances at your sole expense.

**6. Q. What is meant by a "sufficient interest"?**

**A.** A "sufficient interest" gives you the right of possession of a property for the length of time required to complete the exploration, and to protect the Government's interest thereafter. Obviously, unencumbered ownership is sufficient. A leasehold, preferably with renewal rights, or a located claim may also be sufficient.

**7. Q. If I am leasing the property, what must I obtain from my landlord?**

**A.** You should obtain a lien agreement from your landlord using Lien And Subordination Agreements (MME Form 52) supplied by the OME. If the agreement cannot be obtained, you should provide OME with a copy of the letter of refusal. The OME may then accept, in lieu of the agreement, a performance bond (using Standard Form 25 supplied by OME) executed by an approved corporate surety or two responsible individual sureties.

**8. Q. If the property is subject to a mortgage, lien, or other encumbrance, what document should I provide to the Government?**

**A.** You must obtain a subordination agreement from the mortgagee (using MME Form 52) or provide a performance bond before an exploration contract can be executed.

**9. Q. Why must I deal with my landlord if I am leasing or with my mortgagee if my interest is subject to a mortgage?**

**A.** The lien agreement or subordination agreement, or performance bond in lieu thereof, is required to secure the payment of royalty to the Government on any production during the exploration work or after certification if a certificate of possible production is issued (see Repaying the Government).

**10. Q. Would I be eligible under this program if I have no interest in a property and wish to purchase or lease the property only if I can get aid from the Government?**

**A.** No, but you could become eligible by entering into an agreement to purchase or lease the property subject to obtaining an exploration contract.

**11. Q. What evidence must I give that funds are not available on reasonable terms from commercial sources?**

**A.** You must furnish evidence of your efforts to obtain credit from two banking institutions or other commercial sources of credit. This evidence must include true copies of your letters to the banks showing the amount

and terms requested and proposed use of loan funds, and true copies of the replies showing why a loan was not granted.

**12. Q. Will any other evidence of financial eligibility be required?**

**A.** You must give assurance that your share of the exploration costs can be furnished. You may be required also to furnish additional information including a financial statement.

**13. Q. Must I be an experienced operator or miner?**

**A.** Not necessarily, but you will be responsible for securing experienced and competent people to supervise the exploration if an exploration contract is executed.

#### APPLICATIONS FOR ASSISTANCE

**14. Q. How may I obtain financial assistance for exploration?**

**A.** You file an application for assistance on MME Form 40 in duplicate (in triplicate for Alaska), answering all questions to the best of your ability. Application forms may be obtained by writing to the Washington office or to the nearest OME field office. OME field offices are listed on the last page of this pamphlet.

**15. Q. What information is required in my application?**

**A.** Your application must include the following information:

- (1) Evidence of your financial eligibility (see Answer 11);
- (2) A legal description of the property to be explored;
- (3) A statement of your interest in the property;
- (4) A description of the pertinent geology of the property;
- (5) An explanation of your reasons for expecting to find ore;
- (6) An explicit statement of the proposed exploration work;
- (7) A listing of cost estimates for the labor, materials, and equipment that will be required for the work;

- (8) A detailed estimate of the cost of each type of work; and
- (9) Maps showing land boundaries, existing workings, and proposed work.

**16. Q. How can I obtain help to gather this information and prepare the application?**

A. You may consult with the OME Field Officer in your region, or the Washington office, on any question that may arise. If you are not experienced in exploration or mining, you may need a consulting mining engineer or geologist to help you with some of the information. The application form has full instructions. The General Instructions on the front of the form tell you what to do, and each item of information is described in detail on the back of the form.

**17. Q. May the work include blocking out ore for production?**

A. No. The regulations state: "The work shall not go beyond a reasonable delineation and sampling of a mineral deposit, and shall not be conducted primarily for mining or preparation for mining."

**18. Q. What action does OME take upon my application?**

A. The application is reviewed to determine if the information requested on the application form has been submitted. If not, the applicant may be asked to furnish the necessary information. When the application is complete, and if the facts warrant, a field examination of the property may be made by the Government, usually with the applicant, before a final decision regarding the application is reached. A field examination is not made by the Government at the request of the applicant.

**19. Q. How does OME decide whether to approve or deny an application?**

A. The following factors will be considered in passing upon applications:

- (1) The geological probability of making a significant ore discovery;
- (2) The estimated cost of the exploration work in relation to the probable size and grade of the potential deposit;
- (3) The plan and method of conducting the exploration work;
- (4) The accessibility of the project area;
- (5) The background and operating experience of the applicant; and
- (6) The applicant's title or right to possession of the property.

**20. Q. If an application is approved, what further action is taken?**

**A.** The OME offers the applicant an exploration contract.

#### EXPLORATION CONTRACTS

**21. Q. What is the nature of an exploration contract?**

**A.** The contract is an agreement between the Government and the operator. The details of the contract may vary to suit the individual project. However, the essential obligations in each contract are that the Government will contribute to the costs of exploration work and that the operator will perform the work and repay the Government's contribution with interest by royalty on any production from the property (see Repaying the Government).

**22. Q. What are the principal elements of an exploration contract?**

**A.** The contract includes the following:

- (1) A description of the land upon which the work will be performed;
- (2) A detailed statement of the work to be performed;
- (3) A time limit within which the work must be performed (generally not more than 2 years);

- (4) An estimate of costs; and
- (5) Provisions for the Government's contribution (not more than the percent specified or \$250,000) to costs and for repayment with interest to the Government in the event of production.

The contract also includes the standard provisions relating to nondiscrimination, settlement of disputes, eight-hour law, and rebate of wages.

**23. Q. Is more than one form of contract used?**

**A.** Yes. Two contract forms are presently used. Under the short form (MME Form 51), the Government's contribution is a percentage of unit costs of the work, agreed upon in advance and fixed by the contract. Under the long form (MME Form 50), the Government's contribution is a percentage of the allowable actual costs of the work as incurred or a combination of actual and fixed unit costs.

**24. Q. Explain the fixed unit form of contract. What is meant by "fixed unit costs"?**

**A.** The "fixed unit costs" of the work (per foot of drilling, per foot of drifting, per cubic yard of materials moved, etc.) are those agreed upon and stated in the contract. The Government's contribution is a percentage of these "fixed unit costs" of work performed, verified by the representatives of the OME as having been completed and found acceptable under the specifications of the OME contract.

**25. Q. If a fixed unit cost in the contract is lower than the actual cost of the work, on which amount will the Government's contribution be based?**

**A.** The Government's contribution will be based on the amount stated in the contract, whether the actual cost is greater or less. For example, if the fixed unit cost of drifting is \$30 per foot and the actual cost is \$40 per foot, the Government's contribution will be based on \$30.

**26. Q. Am I required to complete all units of work specified by a fixed unit cost contract, regardless of the actual costs per unit?**

**A.** Yes, because that is what you agreed to do under that form of contract. However, under certain circumstances, the number of units may be reduced by mutual agreement.

**27. Q. What is meant by "allowable costs" in the actual cost contract?**

**A.** "Allowable costs" to which the Government will contribute are the direct costs of the work, such as labor, supervision, materials, supplies, and equipment, specified in the contract. These costs must be supported by documentary evidence available for audit. Indirect costs, such as general overhead and corporate management expense, are not "allowable costs" (see Allowable Costs).

**28. Q. Is the cost of work performed before the date of the contract with the Government allowable?**

**A.** No.

**29. Q. If the work provided for in an actual cost contract cannot be completed within the estimated total cost, what are my obligations?**

**A.** Your obligations under the contract vary to suit the circumstances of your project. Usually, your share of the estimated total allowable cost stated in the contract will be the limit of your obligation; but the contract may require you to complete certain items of the work at your own expense above the maximums fixed for those items by the contract.

**30. Q. Who determines whether a fixed unit cost or actual cost contract is to be used, and what factors are considered?**

A. The Government decides which would be more appropriate in each particular case, depending on estimated costs, size and type of operation, etc. A unit cost contract is a much simpler document than an actual cost contract. It is easier to administer and is generally preferable, both to the applicant and the Government, when the unit costs can be reasonably estimated in advance.

31. Q. In what other way is a fixed unit cost contract simpler than an actual cost contract?

A. Under the fixed unit cost contract, the operator is not required by the Government to maintain itemized cost records or to submit documentary invoices of the actual costs incurred.

#### ALLOWABLE COSTS

32. Q. May rehabilitation of old workings be allowed as a part of the cost of exploration?

A. Yes, in certain cases, limited rehabilitation may be provided by the contract when considered necessary to conduct the exploration work.

33. Q. May permanent installations and improvements or their rehabilitation be allowed as a part of the cost of the exploration work?

A. Only to the extent necessary to conduct the exploration work provided in the contract.

34. Q. May the cost of operating equipment be included?

A. Yes, in one of three ways:

(1) Depreciation is allowed on equipment owned by the operator to the extent of 1/60th of its fair market value or of its book value, whichever is less, for each month used on the project.

(2) Rental of equipment not owned by the operator is allowed at reasonable rates.

(3) Purchase of equipment is allowed, in which case the Government has an equity in the salvage value. See Questions 35 and 36.

**35. Q. What becomes of equipment purchased or installations made to which the Government has contributed?**

**A.** The Government owns them jointly with the operator in proportion to the amounts contributed, although title will be in the name of the operator. The Government's interest in any salable or salvageable property must be liquidated and accounted for when the Government's obligation to contribute to costs terminates or when the property is no longer needed for the work.

**36. Q. May I retain such equipment and installations for my own use?**

**A.** Yes, but at a price at least as high as could be obtained by sale to others.

**37. Q. Will I be given any allowance for the use or acquisition of the land and any existing building or installations thereon?**

**A.** No. The land and all fixtures are devoted to the project without allowance.

**38. Q. Will the cost of necessary rehabilitation or repair of existing buildings or installations be allowed?**

**A.** The contract may allow these costs for work performed after the contract is executed if such rehabilitation or repair is necessary for the conduct of the exploration work.

**39. Q. If the operator is an individual, a partnership, or a corporation, may the services of the individual, the partners, or a corporate officer be charged as allowable costs of the work?**

**A.** Yes, to the extent that the time and services of each are devoted exclusively and directly to the performance of the work, that they are qualified to perform the services, and that the services are provided for in the contract.

## PERFORMING THE WORK

**40. Q. Who is to perform the exploration work?**

**A.** You or your employees may perform the work, or the exploration contract may provide for an independent contractor to perform all or any part of the work.

**41. Q. Will the Government give me any technical aid in the conduct of the exploration?**

**A.** Yes. Representatives of the Government inspect the work from time to time and will be available to advise on its performance. However, the Government assumes no responsibility for the performance of the work, and unless you are qualified to direct the work yourself, you will be required to employ competent technical help.

**42. Q. If it is found after some of the work described in the contract has been done that the work should proceed in another direction or be replaced by another type of work, can these changes be authorized?**

**A.** Yes. Both the Government and the operator benefit when the work is performed in the most effective manner, and the contract may be amended accordingly.

**43. Q. If it is found while the work is in progress or upon its completion that additional work is needed to accomplish the original purpose of the contract, can the additional work be authorized?**

**A.** In a suitable case, the contract may be amended to provide for added work and a related increase in the estimate of the total allowable cost. However, the Government's contribution cannot exceed \$250,000.

**44. Q. If, after some of the work has been done, I decide that there is no advantage in completing the work, can the contract be terminated short of completion?**

**A.** Yes, if the Government agrees with you, it will terminate the work by agreement. If it does not agree, you may be required to complete the work. Should you discontinue the project or abandon it altogether without the Government's agreement, you would obviously be subject to a claim for damages or other remedy the law may provide for breach of contract, and a demand for refund of the Government's contribution.

**45. Q.** Who is responsible for damages to persons or property arising out of negligence in the course of the work?

**A.** You are. The work is entirely under your direction and control.

#### REPORTS, ACCOUNTS, AND PAYMENTS BY THE GOVERNMENT

**46. Q.** What reports will I have to make as the work progresses?

**A.** You are required to submit a two-part monthly report to the Government. The first part is a monthly voucher claiming costs for contribution by the Government. In the case of actual cost contracts, costs must be supported by certified true copies of invoices, transcripts of payrolls, etc. The second part is a concise narrative description of the work performed, results obtained, and any unusual situations encountered. It may be illustrated and supported by engineering-geological maps or sketches, drill hole logs, assay reports, etc. The voucher form (Form 9-1648) is furnished by the Government.

**47. Q.** Is any final report required?

**A.** Yes. Upon the completion or termination of the work, you must furnish the Government with an acceptable final report, giving a summary of the work per-

formed under the contract and costs thereof, together with pertinent geologic and engineering data and an estimate of any ore reserves resulting from the exploration work.

**48. Q. What records will I have to keep?**

**A.** For either a fixed unit cost contract or an actual cost contract, you should maintain records in accordance with the items to be reported on a voucher for reimbursement. For a fixed unit cost contract, itemized cost records are not required by the Government. For an actual cost contract, a simple distribution sheet is usually sufficient for small projects; large projects require more formal cost accounts. For either a small or large project under an actual cost contract, documentary support in the form of invoices, payrolls, tax returns, etc., must be available for audit.

**49. Q. May the Government inspect and audit my records and accounts?**

**A.** Yes, either by its own auditors or by a certified public accountant. In virtually all cases, an appointment is arranged at a time convenient to the operator.

**50. Q. How do I obtain the Government's contribution?**

**A.** At the end of each month you submit a voucher as explained in Answer 46. If the voucher is prepared properly, payment usually is made within two or three weeks after the voucher is submitted.

## REPAYING THE GOVERNMENT

**51. Q. Must I repay the Government the money which it contributed?**

**A.** You are required to pay royalty to the Government on any production from the land covered by the contract

from the date of the contract until the Government notifies you, not later than six months after receipt of a sufficient final report (see Answer 47), of certification or of its intent not to certify. If the Government considers that the exploration indicates that production may be possible from the area covered by the contract, it shall so certify. Thereafter, you are required to pay royalty on any subsequent production for the period specified in the contract. The royalty is five percent of the "gross proceeds" or "value" of production in the form in which it is sold, held, or used.

52. Q. If a certification of possible production is issued, how long do I pay royalty?

A. You pay royalty on production for a period of not less than ten years and not more than 25 years from the date of the contract or until the Government's contribution is repaid with interest, whichever occurs first.

53. Q. Will I be required to pay royalty on production of minerals not eligible for exploration assistance?

A. Yes. All minerals or metals mined or produced are subject to the repayment provisions of the contract.

54. Q. What security other than my legal obligation to pay does the Government have for payment of this royalty?

A. The contract gives the Government a lien on your interest in the land and on any production from it. The lien or subordination agreement (see Answers 7, 8, and 9) gives the Government additional security.

55. Q. If the Government does not issue a certification of possible production, will the property be free from the Government's claim for royalty and the liens to secure its payment?

**A.** Yes, except with respect to any production that may occur during the time in which the Government has a right to certify, but not after the Government has given notification of its intent not to certify.

**56. Q.** If the Government certifies that production may be possible, am I required to start producing?

**A.** No. The exploration contract does not require you to produce.

**57. Q.** If I am a lessee of the property and my leasehold is surrendered to the owners, does this action destroy the Government's liens?

**A.** No. If you are a lessee, the lien agreement you secured from the owner establishes a lien on the land and any production from it (see Answers 7 and 54). You also remain liable as surety for royalty on any production.

**58. Q.** If my interest in the property is subject to a mortgage and the mortgage is foreclosed, does this foreclosure destroy the Government's liens?

**A.** No. The liens are protected by the subordination agreement you secured from the mortgagee (see Answers 8 and 54). In this case, your liability as surety also remains in effect.

**59. Q.** Who pays the royalties to the Government?

**A.** If you sell your production, the purchaser should be notified of the Government's royalty interest and directed to make the payment to the Government, supporting the payment with copies of the settlement sheet. If the purchaser does not pay the royalty, you are liable for payment and must supply copies of settlement sheets or sales invoices.

**60. Q.** How is the amount of the royalty verified?

**A.** By audit of production records, sales amounts, and settlement sheets.

**61. Q. Is interest charged on the Government's contribution?**

**A.** Simple interest is calculated from the first day of the month following the dates of the Government's contribution. Interest continues until the period for royalty payment expires as specified in the contract, or until the amount of the Government's contribution is fully repaid, whichever occurs first.

**62. Q. What is the interest rate?**

**A.** The rate is stated in the contract. It is no less than the rate the Department of the Interior would be required to pay if it borrowed from the Treasury, plus a two percent interest charge in lieu of the actual cost to the Government of administering the contract.

**63. Q. How is the interest paid?**

**A.** Interest is paid from the royalty on production (see Answers 51, 52, and 53). You are not obligated to pay royalty unless you produce (see Answer 56), and the interest does not increase the royalty rate.

**64. Q. If I surrender, transfer, or convey any of my rights in the land after certification, who becomes liable for the royalty?**

**A.** You remain liable for the royalty on all production until the royalty period expires or the Government's contribution is fully repaid with interest (see Answer 51).

**65. Q. What Federal Laws and Regulations must I comply with if a contract is granted?**

**A.** You must comply with the following: Nondiscrimination in Employment, Section 202, Executive Order 11246, September 8, 1965; Work Hours Act of 1962—Overtime Compensation, and Copeland (Anti-Kickback) Act—Non-rebate of Wages.

OFFICE OF MINERALS EXPLORATION FIELD OFFICES

~~REGION I~~ ..... ~~Room 656~~  
~~West 900 Riverside Ave.~~  
~~Spokane, Wash. 99201~~

~~Includes Idaho, Montana, Oregon, and Washington~~

*Hal Stager*  
REGION II, *Field Office* ..... Building 2  
345 Middlefield Road  
Menlo Park, Calif. 94025

Includes Alaska, California, Nevada, and Hawaii.

REGION III ..... Room 203, Building 53  
Denver Federal Center  
Denver, Colo. 80225

Includes Arizona, Colorado, Kansas, Nebraska, New Mexico,  
North Dakota, Oklahoma, South Dakota, Texas, Utah, and  
Wyoming, *IDAHO, MONTANA, OREGON, & WASHINGTON*

REGION IV ..... ~~Room 11, Post Office Building~~  
~~Knoxville, Tenn. 37902~~

Includes all other States.



FOR FURTHER INFORMATION, WRITE TO THE OFFICE OF  
MINERALS EXPLORATION, U.S. GEOLOGICAL SURVEY,  
~~WASHINGTON, D. C. 20242.~~ *NATIONAL CENTER,*  
*Reston, VA. 22092.*

As the Nation's principal conservation agency, the Department of the Interior has basic responsibilities for water, fish, wildlife, mineral, land, park, and recreational resources. Indian and Territorial affairs are other major concerns of America's "Department of Natural Resources."

The Department works to assure the wisest choice in managing all our resources so each will make its full contribution to a better United States—now and in the future.



THE LEGISLATURE OF THE STATE OF ALASKA  
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 682 -  
 Title "An Act relating to nonrenewable resource revenues."  
 Requested by Special Committee on the Alaska Permanent Fund Date 1/25/78

II. FISCAL DETAIL

Agency Affected Department of Revenue  
 Program Category Affected General Government  
 Budget Request Unit(s) Affected Treasury Management

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		383.7				
200 TRAVEL		46.7				
300 CONTRACTUAL		328.0				
400 COMMODITIES		5.0				
500 EQUIPMENT		15.0				
600 LAND & STRUCTURES		60.0				
700 GRANTS, CLAIMS, ETC.						
TOTAL		838.4				

FUNDING (Thousands of Dollars)

GENERAL FUND		838.4				
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		9.0				
PART TIME						
TEMPORARY						

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

This note enumerates a portion of the fiscal impact of HB 682 upon Treasury Management. Costs of the following administrative structures are included above:

Board of Trustees - 3 members full time salaried  
 Executive director and staff

Fiscal years subsequent to FY 79 would properly be estimated by the emergent administrative body.

IV. DATE February 23, 1978 PREPARED BY Jim Edenso  
 AGENCY Department of Revenue  
 PHONE 465-2350  
 Original: Legislative Finance  
 cc: Budget and Management  
Prime Sponsor (First Legislator Named)

Introduced: 1/25/78  
Referred: The Special Committee  
on the Permanent Fund and  
Finance

1 IN THE HOUSE

BY THE SPECIAL COMMITTEE ON  
THE ALASKA PERMANENT FUND

2 HOUSE BILL NO. 682

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to nonrenewable resource revenues."  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 37 is amended by adding a new chapter to read:

9 CHAPTER 12. ALASKA RENEWABLE RESOURCES CORPORATION.

10 Sec. 37.12.010. DECLARATION OF POLICY. It is the policy of the  
11 state to

12 (1) rehabilitate, enhance, and develop its renewable re-  
13 sources and, insofar as is consistent with sound resource management  
14 policies, develop its human resources by providing maximum opportunities  
15 for employment and a higher standard of living for its citizens; and

16 (2) utilize the funds set aside under ch. 11 of this title to  
17 further the (A) development of renewable resources that will contribute  
18 to a stable self-sustaining state economy, employment opportunities, and  
19 lifestyle alternatives for its citizens, and (B) commercial, tradi-  
20 tional, and common uses of the state's renewable resources.

21 Sec. 37.12.020. FINDINGS. (a) The legislature finds that Alaska  
22 has renewable resources that are not being utilized to their full poten-  
23 tial. Many problems which confront the state, including high unem-  
24 ployment and unstable economy, could be mitigated by the expanded use  
25 and development of its renewable resources.

26 (b) It is further found that Alaska's economy has historically  
27 depended upon sporadic and non-stable development.

28 (c) It is further found that several key factors have contributed  
29 to the slow development of renewable resource industries, including,

1 (1) reductions in research and development financing and  
2 venture capital financing;

3 (2) a lack of knowledge within the business and financial  
4 communities about conditions affecting renewable resource industrial  
5 development in the state; and

6 (3) a lack of technology appropriate to Alaska.

7 (d) It is further found that the state's policy of assisting the  
8 development of viable industries is best accomplished by providing  
9 assistance to the private sector to identify and demonstrate new pro-  
10 ducts, markets, and technologies.

11 Sec. 37.12.030. ALASKA RENEWABLE RESOURCES CORPORATION CREATED.

12 There is created the Alaska Renewable Resources Corporation to carry out  
13 the purposes of this chapter. The corporation is a public corporation  
14 of the state and an instrumentality of the state within the Department  
15 of Revenue, but has a legal existence independent of and separate from  
16 the state. The exercise by the corporation of the powers conferred by  
17 this chapter is considered an essential function of the state.

18 Sec. 37.12.040. PURPOSES. The purposes of the corporation are to

19 (1) facilitate the rehabilitation, enhancement, and develop-  
20 ment of the state's renewable resources so as to strengthen the self-sus-  
21 taining sectors of the state economy;

22 (2) sponsor research and development of technologies and  
23 innovations for the rehabilitation and enhancement of the state's renew-  
24 able resources to achieve their most appropriate use;

25 (3) identify new products, markets, and technologies for  
26 renewable resource industries in the state; stimulate the research and  
27 development of these products, markets, and technologies; assist in the  
28 demonstration of their technical and economic feasibility; and assist in  
29 their introduction into commercial markets.



**T. E. SMITH & ASSOCIATES**  
Consulting Geologists - Geophysicists  
P. O. Box 81071 • College, Alaska 99708  
Phone (907) 479-2860 or 479-7565



February 21, 1978

The Honorable Clark Gruening  
Alaska House of Representatives  
Pouch V  
Juneau, AK 99811

Dear Mr. Gruening:

I want to thank you and your legislative committee for including Fairbanks in the Permanent Fund hearing schedule early this month.

I listened with interest to the very compelling testimony directed at using Permanent Fund revenues to enhance development of Alaska's renewable natural resource base as a logical step toward diversifying our economy. And while I heartily endorse this expenditure of the revenues, I have to acknowledge also that Alaska's economy in the foreseeable future will probably be based on non-renewable natural resources, and that perhaps Alaskan s should encourage diversification of this economic base as well as that of the renewable resources.

For example, if through State encouragement we could develop just five large mines around the State as our neighboring Yukon has done, and we could carry the products through manufacturing, we would add 55,000 jobs and \$1.9 billion per year to our economic base. Also, for each dollar of capital investment and operating revenue on those mines, more than four dollars of taxes would be generated over a ten-year period. These figures are well substantiated for the Canadian industry and could apply as well in Alaska if a mining industry were encouraged by the State.

Thus in line with the intent of HB 298 and HB 682, may I propose the following as possible candidates for Permanent Fund assistance:

1. Research into modern mining methodology, especially those techniques applicable to arctic or subarctic terrains.
2. Assistance in the form of Small Business Loans for mineral exploration and property development.
3. Management-marketing studies to develop and identify markets for Alaska mineral products.
4. Funding for periodic updates on Alaskan mineral information and mineral potential. This type of study is best compiled by the private sector under contract.

Mr. Clark Gruening  
February 21, 1978  
Page 2


5. Public education on the role of non-renewable resources in Alaska's economy. (I find that few people realize that nearly 70 cents of each State dollar is now derived from non-renewable resources.)
6. Loans for the service industries related to the mineral industries.
7. Assistance with roads or other transportation corridors necessary for a diversified mineral industry.

I am very optimistic for Alaska's economic future and am hopeful that our Permanent Fund revenues might be the vehicle through which we can broaden our economic base.

Again, I am personally delighted that you are chairing this important committee. If I may amplify any of the above thoughts, please do not hesitate to ask.

My very best wishes for a successful legislative session.

Sincerely,

  
Thomas E. Smith  
President

TES:mvf

# Alaska State Legislature

## SPECIAL COMMITTEE ON THE ALASKA PERMANENT FUND

(907) 276-3433

528 W. 5TH, SUITE 270  
ANCHORAGE, AK. 99501

[POUCH V, JUNEAU, AK. 99811]

(907) ~~485-3875~~  
465-4955



## MEMBERS

REP. CLARK GRUENING, CHMN.  
REP. TERRY GARDINER, V. CHMN.  
REP. E. J. HAUGEN  
REP. RUSS MEEKINS  
REP. BILL MILES  
REP. LEO SCHAEFFER  
REP. ~~XXXXXXXX~~  
Rep. Joe Hayes

## House of Representatives

February 28, 1978

Mr. T. E. Smith, President  
T. E. Smith & Associates  
P. O. Box 81071  
College, Alaska 99708

Dear Mr. Smith:

Thank you for your letter of February 21 and for your interest in the Permanent Fund.

The Permanent Fund bills before this Committee at present are designed to direct the State away from future economic dependence on non-renewable resources both in terms of revenue (CSHB 596) and industrial base (HB 682).

I share your optimism for Alaska's economic future. I feel that under the free enterprise system non-renewable resources are in a dominant position and will receive the necessary capitalization more readily from private industry.

However, certain of the projects you mention might qualify for assistance under CSHB 596 though. The Alaska Enterprise Development Fund is directed towards "financially sound small and medium scale" private enterprise and community development projects "for which sufficient capital is not available from other sources on reasonable terms".

Again, let me assure you that your comments are well received and considered and thank you for your interest.

Cordially,

Representative Clark Gruening

CG/jl



# ALASKA MINERS ASSOCIATION, INC.

C.C. Hawley  
Executive Director  
SRA Box 78D  
Anchorage, Alaska 99507  
(907) 344-5354

February 10, 1978

James A. Hamilton  
President

Carl Hefflinger  
Vice President

Irene Ryan  
Secretary Treasurer

The Honorable Clark Gruening  
House of Representatives  
Chairman, House Committee on Permanent Fund  
Pouch V  
Juneau, AK 99801

Dear Clark:

#### Branch Chairmen

Anchorage  
Howard Grey  
715 L Street No. 8  
Anchorage, AK 99501

Sitka  
Gordon Whitcomb  
P.O. Box 990  
Sitka, AK 99835

Juneau  
J.P. Tangen  
Box 1684  
Juneau, AK 99802

Fairbanks  
Ernest Wolff  
P.O. Box 80989  
Fairbanks, AK 99701

Ketchikan  
Keldon Adams  
Box A 28  
Ward Cove, AK 99928

Members of the Alaska Miners Association have pointed out the emphasis on renewable resources in the Permanent Fund program. I suppose that there is a certain justice in this in that it is all being paid for by a non-renewable resource.

However, the split between renewable and non-renewable isn't really a hard and fast one (i.e., agriculture in general is non-renewable) and, further, the hearing record on what Alaskans wanted done with Permanent Fund money isn't all that precise on renewable as against other resources.

We would like to see funds made available on a loan basis to allow more Alaskan ownership and control of mineral resources. To do this, we are drafting a loan program similar to that implemented successfully on a federal level as the DMEA (Defense Mineral Exploration Act). I'm not sure how this could fit with the Permanent Fund, but we would like the opportunity to discuss this and other mining legislation with you.

Could you advise us on your calendar for the week of February 27 through March 3 in Juneau?

Sincerely,

*Chuck*

*27-28 OK*

C. C. Hawley

ams  
cc Mark Ringstad  
Milt Wiltse

# Alaska State Legislature

SPECIAL COMMITTEE ON  
THE ALASKA PERMANENT FUND  
(907) 276-3433

528 W. 5TH, SUITE 270  
ANCHORAGE, AK. 99501

[POUCH V, JUNEAU, AK. 99811]

(907) ~~XXXXXXX~~  
465-4925



## MEMBERS

REP. CLARK GRUENING, CHMN.  
REP. TERRY GARDINER, V. CHMN.  
REP. E. J. HAUGEN  
REP. RUSS MEEKINS  
REP. BILL MILES  
REP. LEO SCHAEFFER  
~~REP. JOE HAYES~~  
Rep. Joe Hayes

## House of Representatives

February 16, 1978

Mr. C. C. Hawley, Exec. Director  
Alaska Miners Association, Inc.  
SRA Box 78D  
Anchorage, Alaska 99507

Dear Mic:

Thank you for your letter of February 14, 1978. I would be pleased to meet with you to discuss your loan program for allowing more Alaskan ownership and control of mineral resources. The Committee has had some discussion on this issue and I would appreciate the opportunity to explore the possibilities for funding more fully with you.

I will be free on February 27 or 28 in the morning before 10:00 AM. If one of these days would be convenient for you, please call my office to arrange a time.

I am looking forward to meeting and talking with you.

Cordially,

Representative Clark Gruening

652

M E M O R A N D U M

To: Subcommittee on the Renewable Resources Development  
Fund of the House Special Committee on the Alaska  
Permanent Fund.

From: Tom Singer  
Administrative Assistant

Subject: HB 682 Nonrenewable Resource Revenues

Date: 2/9/78

SUGGESTED CHANGES

1. Page 1, lines 23-24 and 27: The phrases "high unemployment and unstable economy" and "sporadic and non-stable development" might be rephrased. The legislature might more properly find that Alaska's economy and unemployment are seasonal in nature, particularly those portions of the economy and employment relating to renewable resources.
2. Page 2, line 1, delete "reductions in" and substitute "insufficiency of".
3. Page 2, line 5, following the word "state" add "and a lack of scientific information concerning the resources;".
4. Page 2, line 24, following the word "achieve" delete "their most appropriate use" and substitute "an appropriate use of the resources."
5. Page 2, line 26, following the word "state" add "which will constitute an appropriate use of the resources;".
6. Page 3, lines 7-9: These lines (subsection b of 37.12.050) substantially limit the amount of money available for investments and grants as provided in the rest of HB 682. Also, line 8, following the word "source", add "except income received under AS 37.11.070 from investment fund income".
7. Page 3, lines 23-24; Page 4, lines 5-6: The Committee might want to consider an alternate approach to the matter of legislative approval of removal of a trustee. Such an alternate approach would make removal legal if not specifically disapproved by a majority of the legislature in joint session.
8. Page 4, lines 19-20: The matter of durational residency is complex and in continual litigation. If the committee finds that it wants to retain durational residency for trustees, then it might consider adding the usual boilerplate section saying that if any portion of the bill is found unconstitutional then the rest of the bill still stands.

9. Page 5, line 14: This limits trustees and employees from "board activity" if they have an investment. Should this be changed to "all activity" so that, for instance, an employee cannot do any work preliminary to board action?

10. Page 6, lines 15-17: What does "in order to facilitate investment by the board in specific projects which do not warrant direct supervision by the corporation" mean? If the corporation is to be responsible to the public for its investments, it can be assumed that some supervision will be required for all investments.

11. Page 6, line 19, delete "have income producing potential" and substitute "are economically viable".

12. Page 6, lines 20-23, delete all material and substitute:

(13) provide grants to state agencies, municipalities, or non-profit corporations only for projects for the rehabilitation, enhancement, and development of a common property resource or which have potentially broad application to the public;

The Committee may want to substitute the word "and" for "or" in the fourth line of this section to limit grants to those which achieve both conditions. With "or", a grant can be made for projects "which have potentially broad application to the public", a rather broad power.

13. Page 6, line 24, delete "to implement this chapter" and substitute "governing the exercise of its corporate powers".

14. Page 6, lines 25 and 26, delete all material and substitute:

(15) deposit funds, or invest surplus funds through the permanent fund (AS 37.13) in such obligations as the board of trustees of the Alaska Renewable Resources Corporation may determine;

15. Page 6, line 25, page 12, line 29 and page 13, line 1:

(a) "permanent fund" should read "Alaska Permanent Fund Corporation".

(b) These sections seem to be in conflict. The first gives cash management authority to the APFC, the second to the commissioner of revenue. Shouldn't these sections be made consistent?

Page Three  
Sub-Comm. on RRDF  
2/9/78

16. Page 8, lines 5-7, delete all material and substitute:

(C) sufficient capital is not available from other sources on reasonable terms;

17. Page 8, lines 24 and 25 delete all material.

18. Page 8, line 28, following the word "utilized" delete "when other mechanisms are not feasible and when the benefits of the grant will accrue to the general public" and substitute "as authorized by Sec. 37.12.150 (13)."

19. Page 9, line 2, add:

(3) require investments made by the corporation to be secured by means determined to be appropriate by the board.

20. Page 9, line 5, following the word "invest" add "or otherwise provide financial assistance of".

21. Page 9, line 9, following the word "than" delete "25" and substitute "49".

22. Page 9, line 13, following the word "of" delete "10" and substitute "30".

23. Page 10, line 4, delete "grant" and substitute "provide".

24. Page 10, line 8, the Committee may want to consider adding a durational requirement (three years) because the state has an overriding interest in distributing the benefits of this program to Alaskans who have been here longer than 30 days.

25. Page 10, lines 9 and 10, delete "it is owned by a majority who are residents of the state" and substitute "the majority interest is beneficially owned by residents of the state and a majority of the owners are residents of the state."

26. Page 10, line 24, following the word "chapter" add "detailed infrastructure requirements required by or complementary with corporation investment activity."

27. Page 11, lines 5 and 6, delete "directly appropriated by the legislature only as authorized" and substitute "appropriated".

28. Page 11, line 10, delete "a certified public accountant" and substitute "an independent outside auditor".

29. Page 11, line 19, add:

Sec. 37.12.230. TAX EXEMPTION. The corporation is exempt from all taxes and assessments in the state. All security instruments issued by the corporation, their transfer, and their income are exempt from all taxes and assessments in the state. (from HB 596)

Sec. 37.12.240. EMPLOYMENT PRACTICES. (a) In the performance of contracts let by a recipient of financial assistance under this chapter for construction, repair, preliminary surveys, engineering studies, consulting, maintenance work or any other retention of services necessary to complete any project for which the assistance was made, 95 per cent residents shall be employed where they are available and qualified. If 10 or fewer persons are employed under the contract, then 90 per cent residents shall be employed where they are available and qualified.

(b) The commissioner of commerce and economic development shall incorporate into all lending instruments issued under this chapter the provisions of (a) of this section and a provision calling for immediate foreclosure of the loan for violation of the provisions of (a) of this section.

(c) In addition to immediate foreclosure of his loan, as provided in (b) of this section, a borrower who violates the provisions of (a) of this section is ineligible for any loan under this chapter for 10 years following the violation.

(d) Municipalities and state agencies and departments when contracting for services concerning any aspects of administration and financing of the fund shall comply with AS 36.10. (from SB 429)

Sec. 37.12.250. TECHNICAL ASSISTANCE. Before a project is approved for financial assistance, the corporation shall perform a study to determine its economic and technical feasibility. If the project is subsequently approved for financial assistance, the corporation shall provide such technical assistance as is considered necessary and desirable by the board. The cost of the study and assistance provided under this section shall be borne by the corporation. (from SB 429)

OR

s Sec. 37.12.250. TECHNICAL ASSISTANCE. (a) The corporation may provide financing for pre-investment activities including feasibility studies, when, in its opinion, the proposed investment is of high priority and the financing is not available from other sources on reasonable terms and conditions. Amounts so advanced may form a part of a later investment, if the enterprise or project is financed by the corporation.

(b) The corporation may provide for technical and management advice and assistance to proposed and actual investments as it considers necessary in the circumstances.  
(from HB 298)

Sec. 27.13.260. PUBLIC ACCESS TO INFORMATION. Information in the possession of the corporation is a public record, except that information which discloses the particulars of the business or affairs of a private enterprise or investor is confidential and is not a public record. Confidential information may be disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports, items, persons, or enterprises.  
(from HB 596)

30. Page 11, lines 23 and 24, delete all material.
31. Page 12, line 15, following the word "fund" add "or the Alaska Renewable Resources Corporation".
32. Page 12, line 27, following the word "fund" add "or the Alaska Renewable Resources Corporation".
33. Page 13, line 5, following the word "shall" add "be allocated to the Alaska Renewable Resources Corporation".
34. Page 13, line 19, delete "1982" and substitute "1988".

1/30/78

To: File

The following letter was sent to those listed on the Press, Alaska Growth Policy Council, Pressure Groups, Alaska Investment Advisory Committee and the Native Group (Non-Profit) Mailing Lists.

January 27, 1978

Enclosed please find House Bill 682 concerning the Renewable Resources Development Fund as a follow up to my letter of January 16, 1978. If you have any comments or suggestions on this legislation, please send them to the Committee at the above address.

Cordially,

Representative Clark Gruening

682

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.