ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672
2777 HRES SB 151 - SB 222

PAYING OFF REVENUE BONDS

The tolls form the roads and port facilities normally would pay the interest and principle due on the bonds. If the mining company fails to pay the tolls and charges required to pay for the road, the authority will be able to take legal action against the mining company. If, however, there is a deep slump in mineral prices, the mining company may go bankrupt, and the authority will have no way to pay off the bonds--except by going back to the state of Alaska and asking for more money.

Under SB 151, the state of Alaska has no legal obligation to help authoriities in trouble. As a practical matter, however, the state must come to the rescue, or suffer the consequences of having the reputation of Alaska's bonds all being suspect. This is a problem common to all state authorities. An article in the Sunday, March 20, edition of the Anchorage Times, "'Separate' Agencies Rely on State Backup" investigated this problem. Harold Kuplesky, of the Bankers Trust Company, authorized a $50 million line of credit to the Alaska Power Authority. The Times reported:

> Harold Kuplesky isn't worried. Why? "As a backup, we have the state of Alaska standing behind the project." And if Tyee isn't finished and the state refuses to pay off the loan? "The market looks very dimly on people who do not honor their obligations," Kuplesky replied.
>
> Kuplesky then illustrated his point. "A good example is the New York Urban Development Authority," he said. "They defaulted, and we shut off the credit to the state of New York."
>
> "What happened? "The Legislature came up with the money, and fairly quickly, too."

THE BABY ELEPHANT PHENOMENON

A report to the Legislative Budget and Audit Committee, "Alaska's Public Corporations," by the Institute of Public Administration (Jan. 1982) described this situation in more vivid terms on page 48:

> History has shown very clearly that unless state governments become involved in any bail out arrangements for their corporate subsidiaries, state credit will be damaged if not cut off by bond market participants. Market analysts call this the 'baby elephant phenonmenon' The elephant (the indebted corporation in trouble) stumbles up on the state's front porch and says, "feed me or I'll fall down dead on your doorstep."

OTHER STATE SUBSIDIES

In Senate Bill 151, elections for Regional Resource Development Authorities will be paid for by the state. The operating expenses for the authorities are not specifically provided for. The door is left open for gifts, grants, loans, and payments for contracts from the state, as well as from individuals, private organizations, municipal governments and the federal government.

LOCAL CONTROL

One of the attractive points of SB 151 is that it provides for a measure of local control of road and port development. The RRDA's will be governed by a board of eight members. Five are elected by voters in the region (a region has the same boundaries as one of the regional educational attendance areas) and three are appointed by the governor. The authority has been likened to a single purpose local government. It is established to build roads and ports, but it does not have powers of land use planning, zoning, permitting, or taxation. The bond issues are approved by the Board, but are not voted on by the members of the region.

Adevelopment authority may be succeeded by a first or second class borough. If an authority fails and goes bankrupt, the subsequent formation of a borough may be complicated or prevented by the legal and financial wreckage of the authority.

ALTERNATIVES TO REGIONAL RESOURCE DEVELOPMENT AUTHORITIES

There are several alternatives to RRDA's which provide tax exempt bonding and local control, without risking the state's credit rating.

1. One alternative is to form a new borough in the area(s) that wants to develop roads and ports. The revenue bonds would be issued by the borough or an intramentality of the borough, as was done in Valdez. Because the borough has powers of planning, zoning, and permitting, greater local control is possible than with RRDA's.

2. Another alternative is to modify the Alaska Industrial Development Authority statutes so that they can fund larger projects, and fund roads projects. (Ports are already included.) Local control language is already in place for local governments; it could be extended to include rural areas.

3. Finally, tax free revenue bonds could be issued by the Department of Transportation. This technique is already used for airport construction. With this approach, areawide transportation planning is encouraged, and the chaos of 21 spearate transportation authorities is avoided. Additional statuatory provisions for local review of state projects would be needed.

State may be liable for default

Continued from page I-1

"One of those people" happens to by Charles Logsdon, the man who is in charge of predicting oil prices for the state of Alaska. "We believe oil prices will go up at a rate below inflation until the end of this decade, and then slowly rise," Logsdon said.

So the hydro projects may be the first victims of the lower oil prices.

The story is a happier one for the other state corporations. AHFC, whose $6.5 billion total debt is the largest in Alaska, has protected itself up one side and down the other with multiple levels of insurance.

"We would have to have a Great Depression two or three times to cause our insurance companies to go bankrupt," said former AHFC director Goldbar. "For AHFC to default, things would have to be so bad that mortgage payments wouldn't matter; we'd all be in the streets looking for the next apple."

The Alaska Industrial Development Authority protects its $250 million in debt by only loaning out 75 percent of the value of the projects it funds directly. And, like the AHFC, the property itself is collateral. In addition, AIDA won't loan money for an office building unless it is almost filled with tenants who have signed three-year leases.

"Prudhoe Bay would have to blow up and an earthquake would have to destroy Anchorage, all at once, before I would be in trouble," said AIDA director Bert Wagnon.

So unless a price war drives down oil prices to the point where the trans-Alaska pipeline is shut down, the big state corporations should be able to pay their debt.

For now. But six years from now, the amount of oil pumped out of Prudhoe Bay will begin to decline, and with it, state revenues and the Alaskan economy. By then, the state's general obligation bonds will be largely paid off.

But because of the state corporations, we will not be debt free. On the contrary, the loans made by the state corporations today will require huge payments well into the next century.

In 1992, for instance, AHFC will make a balloon payment on its bonds of $474 million. In the last six months, the housing agency has borrowed nearly half a billion dollars, and continues to sell bonds on a monthly basis. AIDA is also selling bonds at a more modest pace.

"It's totally out of control," said Juneau consultant Thomas Singer, a former state fiscal analyst who blew the whistle on Tyee. "All these independent corporations are borrowing like crazy. It will come back to haunt us."

What bothers Singer is that the accumulation of all this debt was not a result of conscious decisions by policymakers.

"It has its own momentum. It's like a bunch of mushrooms sprouting on cow patties in a field."

5/26

COMMITTEE REPORT

HOUSE

RESOURCES

FURTHER: FINANCE

(7)

5/5/83

Date: MAY 25, 1983

Mr. Speaker:

The Committee on COMMUNITY & REGIONAL AFFAIRS has had CSSB 151(Fin) "An Act relating to Regional Resource Development Authorities; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with House CS for CS SB 151 (CHRA) [X] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note Sup #69 [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature] Do Not Pass

[signature] Do Not Pass

[signature] Do Not Pass

Mike Szymanski Do not PASS

[signature] DO NOT PASS

[signature] (NO REC)

[signature] DO NOT pass See HB 377

[signature]
CHAIRMAN

H 60

Alaska State Legislature

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

To: All Members
House of Representatives

From: Bettye Fahrenkamp, Chairman
Senate Resources Committee

Date: June 16, 1983

Subject: SB 151, Regional Resource Authorities

One of the major obstacles to mineral development and other resource projects in much of Alaska is the absence of transportation facilities. This is particularly true in the unorganized borough where entities to assist in the development of infrastructure are largely absent. Until borough governments are established (when the necessary tax base is present), there is a great need for some entity to assist major resource development projects through the provision of transportation systems.

With virtually no risk to the State and little direct State involvement, the State can provide substantial assistance to rural economic development through the authorization of regional resource authorities as provided in SB 151. Obviously, any direct State funding of transportation systems, as has occurred in Canada, would be a much more expensive and risky option for the State.

SB 151 would authorize the establishment of regional authorities in the unorganized borough area which would provide:

-- Access to tax-exempt revenue bonds which would substantially reduce financing costs of resource developments;

-- Public ownership of transportation systems and ports assuring equal access to all users;

-- Maximized local involvement in decision-making along with state participation and oversight.

In testimony and discussion of this legislation, several concerns were raised, including:

-- The possibility of proliferation of authorities throughout the unorganized borough;

-- The possibility that bonds issued by authorities would create a liability or indebtedness to the State or adversely affect State and local bond ratings;

-- The possibility that access to the facilities developed and run by an authority might not be fairly and equally provided, or that some proposed developments might not receive equal consideration.

In response to these concerns, the following "safety features" have been included in SB 151:

-- The Governor must approve the establishment of any authority;

-- The local people in a region must approve by petition and election the establishment of an authority;

-- An authority must be created before July 1, 1986;

-- The maximum number of possible authorities allowed would be nine, corresponding to regional housing authority boundaries;

-- The State Bond Committee must approve the sale of any revenue bonds by authorities;

-- A provision in the bill and in the Letter of Intent expressly states that bonds issued by an authority do not constitute any liability or indebtedness to the State or political subdivision;

-- An authority expressly does not have normal governmental powers of eminent domain, tax, land use planning and zoning, permitting, etc. Should a borough be established in the region, the authority would automatically be integrated into it;

-- Of the eight members on an authority board, five would be elected from the region, three would be State commissioners. A quorum would require the presence of at least one commissioner;

-- Total indebtedness of all authorities established would be limited by law to $400 million;

-- An authority would be audited each year by Legislative Budget and Audit;

-- A provision to ensure fair and equal access and user fee assessments and fair consideration by the authority of all proposed developments;

-- A provision that state funds cannot be used to pay off or meet revenue bond obligations of an authority.

I believe this legislation is now carefully crafted to achieve the goals of development assistance through maximum local control while providing adequate state input and oversight to assure financial integrity of projects and statewide coordination. The economic benefits of this legislation could be substantial to our state with little direct cost.

I urge you to support this important bill.

SB

168

HOUSE LETTER OF INTENT

House CS for CS for Senate Bill No. 168 (Resources)

The Legislature, in enacting the Energy Program for Alaska, expressed its desire to provide the lowest reasonable power costs to consumers. To further achieve that end, it is the intent of the Legislature to take appropriate action to enhance the Alaska Power Authority's ability to obtain long-term bond financing at the lowest possible cost. It is for this purpose that we have amended the "Susitna equity clause."

Substantial equity has been invested in the Energy Program by the State of Alaska and declining state revenues will have an impact on the development of energy projects for other regions of the state. It is the intent of the Legislature that the balance of the financing needed for those projects under construction in the Program be raised by debt financing - thus reserving future revenues for future energy projects throughout the rest of the state. We support the intent of the Alaska Power Authority to go to the bond market in early 1984 for the necessary funds. However, in order to further facilitate the bonding capability of the Power Authority, it is imperative that utilities who will receive wholesale power from Solomon Gulch, Terror Lake, Tyee Lake and Swan Lake sign power sales contracts as soon as possible and no later than January 1, 1984. By taking this action, the utilities served will ensure long-term benefits to their consumers through stable power rates.

The Governor is requested to prepare a plan for providing the necessary equity for future projects in the Energy Program for Alaska. This plan must be constitutionally sound and provide for the proper administrative and Legislative approval for the various projects. This plan shall be submitted to the Legislature no later than January 15, 1984.

A M E N D M E N T

Offered in the HOUSE BY:

To: HCS CSSB 168 (Res)

Page 9, line 22: following the word "with",

insert the

Page 9, line 25: delete all material, and insert

finance power projects in the Energy Program for Alaska.

COMMITTEE REPORT

HOUSE

(11) FURTHER:

Date: 6/20/83

6/20/83

Mr. Speaker:

The Committee on FINANCE has had CSSB 168(Rls)

"An Act relating to the Alaska Power Authority; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with H CS for CSSB 168 (Fin) [X] same title [ ] new title

and recommends No recommendation

[ ] AND attaches ~~a~~ "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS
Terry Martin	Do not Pass unless Section 21 Deleted
R. Bettisworth	(No Rec)
	(No Rec)
	(No Rec)
	Delete Sec. 21
	(no rec)
	(no rec)
	(No Rec)

CHAIRMAN

H 60

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM June 21, 1983

SUBJECT: HCS CSSB 168 (Finance)

TO: Representative Albert P. Adams
Chair, House Finance Committee

FROM: (LHA) Linn H. Asper
Legislative Counsel

I have prepared a final draft of a Finance Committee substitute for the above bill, adding a section authorizing the Chester Lake project under AS 44.83.185(c) and amending the authorization for the Terror Lake project. These additions raise a problem with the title of the bill that you should be aware of. The title of the bill is "An Act relating to the Alaska Power Authority; and providing for an effective date." The state constitution (Article II, section 13) requires that

> The subject of each bill shall be expressed in the title.

This rule is interpreted to mean that the title shall adequately describe the contents of the bill. I do not believe that an AS 44.83.185(c) authorization of a specific project or the amendment of a previous authorization is adequately described in the title, "An Act relating to the Alaska Power Authority". Normally I would suggest amending the title, but this is not possible under Rule 41(b) of the Uniform Rules of the Alaska State Legislature. In recent years the Alaska Supreme Court has interpreted Article II, section 13 very broadly in favor of the legislature. It may well be therefore, that the Finance Committee substitute would survive constitutional scrutiny, but I wanted you to be informed of the potential for a legal challenge to this version of the bill.

LHA:ljb
25/009

STATE OF ALASKA
FINAL STATEMENT OF FISCAL IMPACT

Bill No: SB 168 Date on Bill:
Title: "An Act relating to the Alaska Power Authority; and providing for ....."
Sponsor: Rules Committee by request of the Governor
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0			

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. This statement has been reviewed by the OMB in the Office of the Governor. It may considered to represent the policy of the Sheffield Administration and the final estimate of fiscal impact.

Prepared By: Eric Yould, Executive Director Phone: 277-7641
Division: Alaska Power Authority Date:

Approved by Commissioner: Richard A. Lyon Date:
Department: Commerce and Economic Development

Reviewed by OMB: Date: 3/3/82
Phone: 465-3568

5. Distribution:
Original to Legislative Finance
Copy to Department
Copy to Sponsor
Copy to Requestor

2/8/83

HOUSE RESOURCES COMMITTEE

JUN 20 RECD

Anchorage
CHAMBER of COMMERCE

Crossroads of the Air World

June 16, 1983

Honorable John Ringstad
Chairman, Natural Resources
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear John:

This letter is to confirm that our committee has reviewed SB168 and do concur in the following change: "That the Susitna 'equity' clause be changed to 3 1/2 billion to be contributed by January 1, 1990."

We hope in the throws of the final days of the session that the $25 million for the intertie and the $33 million for Susitna stay in tact. We sincerely thank you and your committee for the hard work you put forward in this project this year -- we won't have a Susitna without supporters like yourself and your committee.

Sincerely yours,

Robert C. Penney
Chairman
Energy Committee

RCP/lw

Proposed amendment to SB 168

Page ____

Line ____

Insert a new section to read:

* Sec. 7. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.192. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS. In requesting bids and awarding construction contracts under this chapter the authority may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker and may not agree to provide insurance to a contractor who is awarded a construction contract.

Renumber succeeding sections accordingly.

A M E N D M E N T

Offered in the SENATE By Eliason

To: SB 168

4916
4917

Page 4, after line 10: insert a new section to read:

"* Sec. 7. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.192. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS. In requesting bids and awarding construction contracts under this chapter the authority may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker and may not agree to provide insurance to a contractor who is awarded a construction contract."

Renumber succeeding sections accordingly.

SB 168/LCD

The Chemical Bank v. Washington Public Power Supply System case decided by the Washington Supreme Court on June 15, 1983 in which the court holds invalid power sales agreements supporting $2.5 billion in public bonds will have a profoundly negative effect on public power financing. The court in the WPPSS case specifically said that the municipalities and the PUDs lacked statutory authority to enter into contracts with WPPSS which required the utilities to make payments regardless whether a project was completed and regardless of reduction or curtailment of project output. As well, the court stated that stepup provisions, i.e., provisions requiring payments on behalf of defaulting parties, were not authorized under Washington law.

In light of this decision, bond counsel deems it necessary that the authority of Alaska Power Authority to enter into power sales agreements with stepup and take-or-pay provisions must be absolutely clear. Bond counsel feel that such contracts are currently authorized by the statute; however, in order to make bonds secured by such contracts marketable, in light of the WPPSS case, it is felt necessary to further specify the contracting authority. It should be emphasized that this amendment does not authorize the APA to transfer to utilities the risk of non-completion of a project, as was attempted by WPPSS.

Add the following

AS 44.83.092. The Authority and any municipality or public or private entity operating an electric utility (herein called a "utility") may enter into a contract providing for or relating to the sale of electric energy by the Authority to the utility. The contract may provide, among other things, that the sum or sums so payable are operating expenses of the utility and are valid and binding obligations payable from the gross revenues of the utility and may provide for a single appropriation of the amounts payable for the term of the contract. The contract may provide, among other things, that the utility assume the obligations of a defaulting contracting party, that after completion of a project the utility is obligated to make payments notwithstanding the suspension or curtailment or the amount supplied of the power and energy of the project, and that payments under the contract are not subject to any reduction by offset or otherwise.

(2) if the division of budget and management determines that the Alaska Power Authority has completed both a reconnaissance study under AS 44.56.080(13) and a statement under AS 44.56.180(c),

(A) and that statement or the project for which it was prepared has been approved by the legislature under AS 44.56.180(c), the Alaska Power Authority may proceed with that project under AS 44.56.183 added by sec. 24 of this Act;

(B) and that statement or the project for which it was prepared has not been approved by the legislature under AS 44.56.180(c), the division of budget and management shall review the statement for compliance with the requirements of AS 44.56.183 added by sec. 24 of this Act before the statement is submitted under AS 44.56.185, added by sec. 24 of this Act, to the legislature; review by the division of budget and management may not unreasonably delay submission of the statement to the legislature;

(3) if a proposed new project has been approved by the legislature, or if money has been appropriated by the legislature for a proposed new project, and the Alaska Power Authority has not completed a reconnaissance study under AS 44.56.080(13) or a statement under AS 44.56.180(c), the project is subject to the provisions of AS 44.56.177 - 44.56.185.

* Sec. 48. APPROVAL OF PENDING PROJECTS OF THE ALASKA POWER AUTHORITY. (a) The Alaska Power Authority has submitted to the governor and the legislature a statement of its recommendations for financing certain power projects and a statement outlining the general design, demonstration of financial feasibility, and maximum amounts of revenue bonds and appropriations necessary for the projects, together with a statement of the design, acquisition, construction and financing of the projects by the authority or another person which satisfy the conditions of AS 44.56.180. The legislature has adopted joint resolutions approving the general design and maximum amount of

bonds to be issued for several of the projects and those actions are confirmed.

(b) Actions taken by the legislature before the effective date of this Act to approve the general design and maximum amount of bonds for power projects are confirmed and the Alaska Power Authority is authorized to issue its bonds for the following power projects in the maximum principal amount set out after each:

(1) Solomon Gulch, $20,000,000;

(2) Terror Lake, $120,000,000.

(c) The general design and maximum amount of bonds for power projects are approved and the Alaska Power Authority is authorized to issue its bonds for the following power projects in the maximum principal amount set out after each:

(1) Golden Valley Electric Association waste heat, $110,000,000;

(2) Tyee Lake, $70,000,000;

(3) Swan Lake, $120,000,000;

(4) Glacier Highway Electric Association, $800,000;

(5) Cordova Electric Cooperative, $6,500,000;

(6) Matanuska Electric Association, $2,500,000;

(7) Homer Electric Association, $3,360,000;

(8) Naknek Electric Association, $730,000;

(9) Lake Elva, $15,000,000; and

(10) Black Bear Lake, $30,000,000.

(d) The Alaska Power Authority is authorized to proceed with design and acquisition of right-of-way of the Anchorage-Fairbanks transmission intertie. This project may be financed by revenue bonds issued by the authority, appropriations from the general fund, or other funding sources approved by the legislature.

* Sec. 49. TRANSITION: WATER RESOURCES REVOLVING LOAN FUND. (a) The

A M E N D M E N T

Offered in the HOUSE BY ZHAROFF

To: CSSB 168 (Rules)

Page 10, after line 9: insert a new section to read:

"* Sec. 23. Section 48, ch. 82, SLA 1980 is amended by adding a new subsection to read:

(e) The authorization made by this section for the Terror Lake project includes authorization for the installation of a third generating unit at the project with whatever money may be made available for that purpose."

Renumber succeeding sections accordingly.

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Ringstad

TO: _____ HOUSE BILL No. _____

HCS CS SENATE BILL No. 168 (Finance)

PAGE: 2 LINE: after line 17

Page 2, after line 17, add a new section to read:

* Sec. 3. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.092. AUTHORITY FOR MUNICIPALITIES AND UTILITIES TO ENTER INTO POWER SALES CONTRACTS. The authority and any municipality or public or private entity operating an electric utility, or a municipality or private entity and another municipality or private entity, may enter into a contract providing for or relating to the sale of electric power by the authority to the municipality or entity, or by the municipality or entity to another municipality or entity. The contract may provide

(1) that the amounts payable under the contract are operating expenses of the utility and are valid and binding obligations of the municipality or other entity payable from the gross revenues of the utility;

(2) for one or more appropriations of the amounts payable under the contract;

(3) for the municipality or other entity to assume the obligations of another contracting party in the event of a default by that party;

(4) that after completion of a project the municipality or other entity is obligated to make payments notwithstanding a suspension or reduction in the amount of the power supplied by the project; or

(5) that payments under the contract are not subject to reduction by offset or otherwise.

SB 168

LETTER OF INTENT

It is the intent of the legislature that the language in AS 44.83.092 Authority for Municipalities and Utilities to Enter into Power Sales Contracts is permissive language for the local utilities to enter a power sales contract. This section addresses the essential components of a power sales contract and the legal authority to enter such contracts, not the requirement to enter such a contract or any of its provisions.

It is also understood by the legislature that in AS 44.83.092 (1) that the amounts payable under the contract may be operating expenses of the utility and the determination of this issue can only be found in the local utilities current financing documents.

The effect of SB 168, by section, is as follows:

Section 1. Clarifies the language of the statute by requiring that affirmative votes consist of the majority of the directors present.

Section 2. Allows for meetings by electronic media. In the long run, this would decrease travel costs and time wasted while allowing the APA Board to meet on short notice and despite climatic travel constraints.

Prevents directors from voting on leases or contracts if they have a conflict of interest, but exempts directors who are customers of electric co-ops, and therefore, by definition, are part owners.

Section 3. Essentially makes it permissive rather than mandatory for APA to issue bonds and further clarifies the language of the statute

Section 4. Provides for consistency between statutes

Section 5. Provides for conformity with other pertinent statutes

Section 6. Provides for an independent cost estimate to be submitted with the feasibility study and a plan of finance. I believe that this section is redundant in view of 44.83.186, which requires an independent cost estimate after the legislature approves a project and allows for only a 7.5% increase before the project has to be recycled by the APA and reauthorized by the legislature. As a matter of policy, the APA has been obtaining independent cost estimates since last year and has hired an in-house estimator to provide further verification of cost estimates. The proposed procedure would further increase the cost of the studies especially since this section would apply to large and small projects equally.

Section 7 Prohibits the use of wrap-up insurance requirements by the power authority. This provision was added in H. Resources.

Section 8 Adds a requirement for sale contracts for transmission of electricity. The use of the term electrical power or energy is redundant. The section further clarifies that the contracts must be in compliance of AS 44.83.380 - 44.83.425 or AS 44.83.090.

Sections 9&10 Insure that AS 44.83.361 does not violate the Alaska Constitution as alleged in a pending lawsuit.

Sections 11&12 Clarify the provisions of existing statutes on the Rural Electrification Revolving Loan Fund program without making substantial changes to it.

Section 13 Makes a project's expenditures dependent on a finding that the project is economically feasible. This section removes the redundancy under current statute, preserving the intent to ensure economic feasibility while eliminating the criteria in two places in the statutes.

Section 14 Clarifies the existing statute on the use of the fund for federally owned projects.

Section 15 Modifies the existing statute to allow APA to market bonds.

Section 16 Provides for ownership of projects by the authority rather than the state and should make it easier to market bonds.

Section 17 Provides for use of national and industrial standards in the APA's determination of whether a utility is qualified to operate a power project owned by APA.

Section 18&20 Assure that power projects are operated in a manner consistent with the bonding agreements.

Section 19 Amends the Susitna "Equity" Clause from $5 billion by July 1, 1986 to $3.5 billion by July 1, 1990.

Section 21 Allows the authority to sell power at an industrial rate. This provision was added in H.Resources.

Section 22 Allows APA to adjust the wholesale power rates to meet bonding requirements while still complying with the statutes on rate setting.

Section 23 Clarifies that interties are not covered under the energy program for Alaska in the rate setting subsection. This clarifies the intent desired by the legislature when it passed HB9 last year.

Section 24 Clarifies the definition of debt service thereby making it easier to secure bonds.

Section 25

Repeal of AS 44.83.195(b) is necessary in order to align it with other rate making provisions of the statutes.

Repeal of AS 44.83.382(b)(2) is required because any unencumbered revenues must go into the general fund.

Repeal of AS 44.83.398(b)(2) is desirable for two reasons. First, in a pending lawsuit Trustee of Alaska v. State, the constitutionality of this section is being challenged. Second, this section could result in a substantial increase in APA wholesale rates if the legislature does not appropriate a total of $6 billion by July 1, 1986, into the power development fund. Since it appears almost certain that this level of appropriation can not be achieved, APA is experiencing problems in negotiating power sales contracts. Since providing lowest reasonable cost energy is the mandated goal of the program, it makes sense to minimize uncertainty and maximize marketability.

Repeal of AS 44.83.186. An additional requirement of an independent cost estimate immediately following project approval would serve no useful purpose and would involve additional costs. (An independent cost estimate is already required prior to submittal to the legislature for approval.)

Section 26

Provides for an immediate effective date.

SB

202

GREATER SITKA

Chamber of Commerce, Inc.

May 21, 1984

To: All Members of the House Resources Committee
House of Representatives
Alaska State Legislature

Reference: Committee Substitute for Senate Bill 202 (Finance)
Establishment of the Yakataga State Forest

The Greater Sitka Chamber of Commerce Board of Directors urges your support of the above bill establishing a State forest in the Yakataga area. We heartily support all efforts toward the continuance of the forest products industry in the State of Alaska.

Sincerely,

Dave Knapp
President

DK:kf

cc: Senator Dick Eliason
Representative Ben Grussendorf

POST OFFICE BOX 638 • SITKA, ALASKA 99835

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
FISHERIES SUB-COMMITTEE

P.O. BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Rep. John Ringstad, Co-Chairman
House Resources Committee

FROM: Sen. Dick Eliason

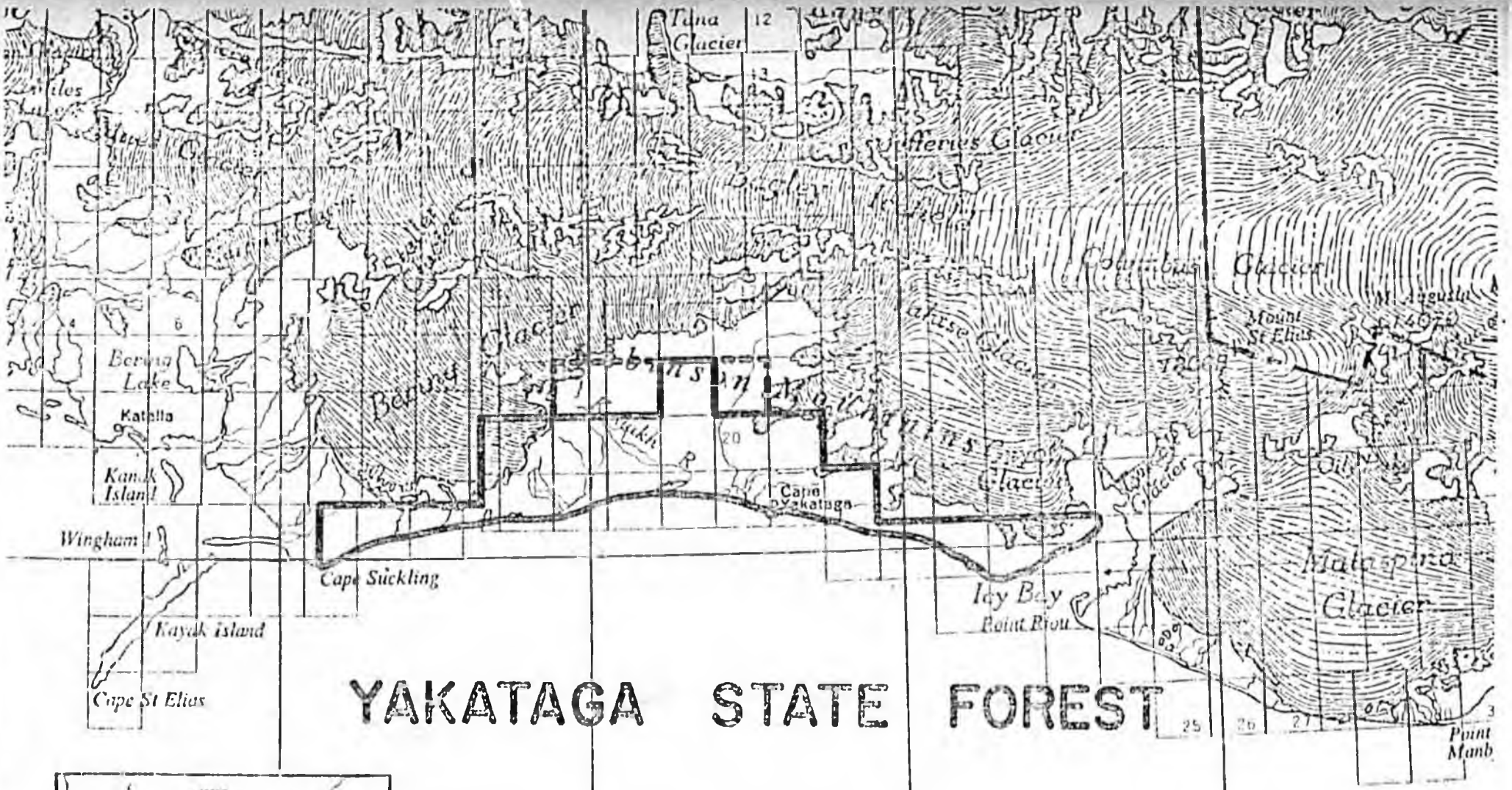
DATE: May 16, 1984

RE: SB 202, Establishing Cape Yakutaga State Forest

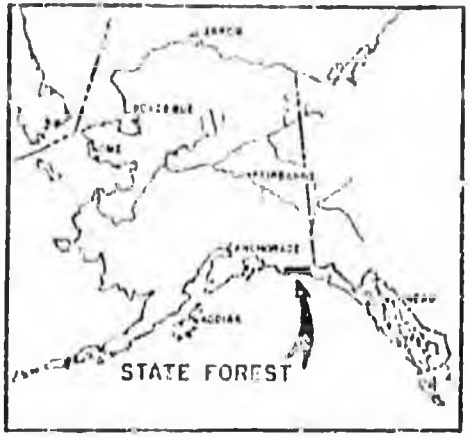
SB 202 is currently in the House Resources Committee and as I understand, has not as yet been scheduled for a hearing. It is a very good bill and I am anxious to see it passed this session. As we are nearing the end of the session, I am hopeful that you also believe in the intent and merit of SB 202 and will schedule it for Resources Committee action soon.

The Senate Resources Committee held hearings and took testimony on SB 202 so Sen. Fahrenkamp's office should be able to supply your office with information from their files and I, of course, will be very happy to discuss the bill with you myself and provide any additional information you may need.

Thank you for your consideration.



YAKATAGA STATE FOREST



LOCATION MAP

FOREST BOUNDARY

ADDITIONS IF NATIVE RELINQUISHED

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/17/84

B.'82

REQUEST
Bill/Resolution No.: CS for SB 202 (Fin)
Title: Yakutaga State Forest

Sponsor: Eliason
Requestor:
Date of Request: 2/8/84

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRM & EC

BRU, Program or Suoprogram(s) Affected:
Forest Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		46.4	46.4	46.4		
200 TRAVEL		15.0	15.0	15.0		
300 CONTRACTUAL		10.0	10.0	10.0		
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		71.4	71.4	71.4		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		71.4	71.4	71.4		
FEDERAL FUNDS						
OTHER						
TOTAL		71.4	71.4	71.4		

POSITIONS:

FULL-TIME		1.0	1.0	1.0		
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: ~~Attach a separate page for~~ Analysis

Prepared By: George Hollett Phone: 276-2653
Division: Forestry Date: 4/3/84

MH Approved by Commissioner: Norm D Dowdy, Deputy Date: 4/17/84
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

YAKATAGA STATE FOREST
FACT SHEET

The establishment of a Yakataga State Forest will commit State-owned lands between Cape Suckling and Icy Bay to long term public retention to be managed for multiple use and sustained yields. There are about 460,000 acres within the area, of which an estimated 79,000 acres have more than 20,000 board feet per acre. These are among the most productive forest lands owned by the State and the timber resources are already being managed on a sustained yield basis. Commitment of the natural resources will have a beneficial effect on the economie of Yakutat and Cordova and will likely stimulate long term industrial and commercial development based on a standing sawtimber volume of 4.3 billion board feet with an estimated potential yield of the area of 20 million board feet (MMBF) per year. The annual revenue to the State at today's prices would be one to two million dollars with a total annual product value of 5 to 10 million dollars.

To date, 190 MMBF has been harvested within the proposed State Forest, all since 1970. An additional 49 MMBF was sold in 1983, to be harvested over the next five years. A jetty, log transfer facility, sort yard, logging camp, airstrip, and about 20 miles of mainline road were constructed by the previous logging operator. A DOF office and cabin were built by the State.

The DOF has arranged for multiple use management of the forested lands within the proposed State Forest. The Division has worked with the Alaska Department of Fish and Game to protect important wildlife habitat. Also, the DOF has worked out a cooperative use agreement with DMEM and North Coast Mining Company for joint operation on mineral claims.

from the office of Senator Dick Eliason

YAKATAGA STATE FOREST FACT SHEET - SB 202 - MAY 11, 1984

THE ESTABLISHMENT OF A YAKATAGA STATE FOREST WILL COMMIT STATE-OWNED LANDS BETWEEN CAPE SUCKLING AND ICY BAY TO LONGTERM PUBLIC RETENTION TO BE MANAGED FOR MULTIPLE USE AND SUSTAINED YIELDS. THERE ARE ABOUT 460,000 ACRES WITHIN THE AREA, OF WHICH AN ESTIMATED 87,000 ACRES HAVE MORE THAN 20,000 BOARD FEET PER ACRE. THESE ARE AMONG THE MOST PRODUCTIVE FOREST LANDS OWNED BY THE STATE AND THE TIMBER RESOURCES ARE ALREADY BEING MANAGED ON A SUSTAINED YIELD BASIS. COMMITMENT OF THE NATURAL RESOURCES WILL HAVE A BENEFICIAL EFFECT ON THE ECONOMIES OF YAKUTAT AND CORDOVA AND WILL LIKELY STIMULATE LONGTERM INDUSTRIAL AND COMMERCIAL DEVELOPMENT BASED ON A STANDING SAWTIMBER VOLUME OF 4.3 BILLION BOARD FEET WITH AS ESTIMATED POTENTIAL YIELD OF THE AREA OF 20 MILLION BOARD FEET (MMBF) PER YEAR. THE ANNUAL REVENUE TO THE STATE AT TODAY'S PRICES WOULD BE ONE TO TWO MILLION DOLLARS WITH A TOTAL ANNUAL PRODUCT VALUE OF FIVE TO TEN MILLION DOLLARS.

TO DATE, 190 MMBF HAS BEEN HARVESTED WITHIN THE PROPOSED STATE FOREST, ALL SINCE 1970. AN ADDITIONAL 49 MMBF WAS SOLD IN 1983, TO BE HARVESTED OVER THE NEXT FIVE YEARS. A JETTY, LOG TRANSFER FACILITY, SORT YARD, LOGGING CAMP, AIRSTRIP, AND ABOUT TWENTY MILES OF MAINLINE ROAD WERE CONSTRUCTED BY THE PREVIOUS LOGGING OPERATOR. A DOF OFFICE AND CABIN WERE BUILD BY THE STATE.

THE DOF (DIVISION OF FORESTRY) HAS ARRANGED FOR MULTIPLE USE MANAGEMENT OF THE FORESTED LANDS WITHIN THE PROPOSED STATE FOREST. THE DIVISION HAS WORKED WITH THE ALASKA DEPARTMENT OF FISH & GAME TO PROTECT IMPORTANT WILDLIFE HABITAT. ALSO, THE DOF HAS WORKED OUT A COOPERATIVE USE AGREEMENT WITH DMEM AND NORTH COAST MINING COMPANY FOR JOINT OPERATION ON MINERAL CLAIMS.

THE SENATE RESOURCES COMMITTEE HELD A TELECONFERENCE ON THIS BILL AND SUPPORT WAS UNANAMOUS. SUPPORTERS INCLUDE: ALASKA LOGGERS ASSOCIATION, ALASKA MINERS ASSOCIATION, CITY OF YAKUTAT, ALASKA SOCIETY OF AMERICAN FORESTERS, THE CORDOVA LANDS COALITION, AND OF COURSE, THE DIVISION OF FORESTRY.

THE BILL HAS BEEN AMENDED TO ALLOW FOR A MAXIMUM OF 3,000 ACRES WITHIN THE FOREST TO BE EXCHANGED FOR PRIVATE INHOLDINGS WITHIN KACHEMAK BAY STATE PARK, OR OTHER PRIVATE LAND OR INTERESTS IN LAND. THIS AMENDMENT IS SUPPORTED BY THE DEPARTMENT OF NATURAL RESOURCES, THE SELDOVIA NATIVE ASSOCIATION, AND CHUGACH NATIVES, INC. IT WILL ALLOW FOR GREATER FLEXIBILITY WITH DNR WHEN NEGOTIATING LAND EXCHANGES.

Alaska Loggers Association, Inc.

SB 202

111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

February 24, 1984

Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V State Capitol Building
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

The Alaska Loggers Association supports the establishment of Yakataga State Forest as proposed in Senate Bill 202. Inclusion of this area into the State Forest system will greatly benefit all the people of Alaska as well as the forest products industry.

The 460,000 acres in the proposed forest are among the most productive forest lands owned by the State of Alaska. These forest lands are already being managed on a sustained yield basis. Since 1970, 190 million board feet have been harvested. An additional 49 million board feet were sold in 1983. This will be harvested over the next five years. A commitment of this forest land to long term timber management will most likely stimulate more development in Yakutat and Cordova. The standing sawtimber volume of 4.3 billion board feet and estimated potential yield of 20 million board feet of timber per year would have a beneficial effect on the economies of both communities.

Establishment of a Yakataga State Forest would greatly benefit the people of Alaska by adding one more source of steady income to the State's income. The annual revenue to the State at today's prices would be one to two million dollars with a total annual product value of 5 to 10 million dollars.

An additional benefit of committing this land to long term public retention to be managed for multiple use and sustained yield is the assurance of a continuous source of timber to the forest products industry. At the present time, it is difficult for the State Division of Forestry to project an annual allowable cut since the timber land base has been so variable. Classifying this land as a State Forest would insure that this prime State owned timber land will be managed for its best possible uses and would allow the Division of Forestry to do more long range planning.

Again, Alaska Loggers Association fully supports the establishment of Yakataga State Forest and would appreciate your support of Senate Bill 202. Thank you for your consideration of this bill.

Sincerely,

Donald A. Bell

Donald A. Bell
General Manager
ALASKA LOGGERS ASSOCIATION

DAB/mjh
cc: Alaska State Senators

SERVING ALASKA'S TIMBER INDUSTRY

GREATER SITKA

Chamber of Commerce, Inc.

March 29, 1983

Senator Richard Eliason
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Senator Eliason:

The Greater Sitka Chamber of Commerce supports SB 202 and is appreciative of such efforts on behalf of the wood products industry. We encourage you to work with the Department of Natural Resources in order to define the boundaries of a State forest in the Yakataga area.

Sincerely,

Ernestine Griffin

Ernestine Griffin,
President

EG:kf

cc:
Senator Bettye Fahrenkamp
Senator Robert Ziegler
Senator Bob Mulcahy
Senator Vic Fischer
Senator Arliss Sturgulewski

bcc: City and Borough Assembly

3/16/84

ABOVE TESTIMONY RESUBMITTED 3/16/84 TO SENATE RESOURCES COMMITTEE PUBLIC HEARING ON SB 202 - ESTABLISHING A YAKATAGA STATE FOREST - VIA TELECONFERENCE.

ALASKA SOCIETY OF AMERICAN FORESTERS
1123 Ril Circle
Anchorage, AK 99504

March 12, 1984

Senator Richard Eliason
Pouch V
Juneau, Ak 99811

Dear Senator Eliason,

The Alaska Society of American Foresters (SAF), comprised of 280 professional foresters in Alaska, is appreciative of the opportunity to present a statement in support of Senate Bill 202, creating the Yakataga State Forest.

SAF is a strong proponent of multiple use management, whereby all of the natural resources of a given area are managed in a planned and balanced manner. This is a written policy of SAF both at the State and National level.

Establishment of a State Forest at Yakataga is an excellent opportunity for true multiple use management. Plans of the State's Division of Forestry call for timber, mining, fish and wildlife habitat, and other natural resources all being used or maintained compatibly in a multiple use and sustained yield approach. Furthermore, this approach is consistent with the Alaska Forest Resources and Practices Act.

SAF is encouraged by the stated intent and demonstrated commitment of the State's Division of Forestry to (1) sustained yield management of the timber, (2) cooperation with the Alaska Department of Fish and Game in the protection of wildlife habitat, and (3) active pursuit of a cooperative use agreement with mining interests in the proposed State Forest area.

A balanced land and resources management program, such as is beginning to evolve thru these efforts, should lead to sound economic development of the resources and the local communities, as well as provide protection for other natural resources of the area.

The Alaska Society of American Foresters strongly urges passage of Senate Bill 202.

Sincerely,

Vernon J. LaBau

Vernon J. LaBau
State Chairman
Alaska Society of American Foresters

MAR 26 1984

SELDOVIA NATIVE ASSOCIATION, INC.

P.O. DRAWER L

SELDOVIA, ALASKA 99663

(907) 234-7625 • 234-7890

March 23, 1984

Honorable Senator John Sackett
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Senator Sackett:

This letter is to express Seldovia Native Association's support of Senate Bill 202, creating a State Forest at Yakataga.

We also support the amendment to this bill by Senator Bettye Fahrenkamp, allowing the Commissioner of the Department of Natural Resources to make limited land trade within the State Forest.

We have discussed SB 202 with Sam Bessino, the land manager for the Chugach Natives Inc. As a result of our discussions, we would support a further amendment that may be introduced by Senator Richard Eliason, which would allow the Commissioner of D.N.R. to negotiate with Chugach Natives Inc., for any lands which are not selected by the Seldovia Native Association as part of the Kachemak Bay State Park.

Sincerely,

Fred H. Elvsaas

Fred H. Elvsaas, President
Seldovia Native Association, Inc.

cc: All State Senators
Chugach Natives Inc.
Esther Wunnicke
Gary Gustafson

Cordova Lands Coalition
Box 1183
Cordova, Alaska 99574

Feb. 26, 1984

Senator Richard Eliason
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason,

We have recently heard that you have introduced a bill to create a State Forest in the Yakataga area. We would like to express our strong support for this action.

The Cordova Lands Coalition wrote you last year supporting the establishment of a Yakataga State Forest. We appreciate your continued efforts this year as well.

The Yakataga area is the best timber area remaining in State hands. It is also an area of rich wildlife and fisheries resources. So far, the bulk of the area has been little impacted by human use. This area would make a major impact on the State Forest timber base, helping to allow sustained commercial levels of timber harvest. At the same time, State Forest designation would promote multiple use management with protection of key wildlife and fisheries resources.

Thank you for sponsoring this bill to designate a Yakataga State Forest.

Sincerely,

Oliver Osborn

Oliver Osborn
President

MAR 26 1984

CHUGACH NATIVES, INC.
903 WEST NORTHERN LIGHTS, SUITE 201 • ANCHORAGE, ALASKA 99503
(907) 276-1080 TELEX 26-497

March 22, 1984

Mr. Max Gifford, Staff Assistant
Senate Finance Committee
Pouch V
Juneau, AK 99811

re: CSSB 202 Yakataga State Forest

Dear Mr. Gifford:

Thank you for taking time with me yesterday. CNI is requesting that the following amendments to CSSB 202 be included through the auspices of your office when the Bill comes before the Finance Committee:

(1) after "Kachemak Bay State Park" add "or other private lands or interests therein"; and
(2) Change "1985" to "1986".

The effect of our proposed amendments would be to enable the Commissioner of DNR to exchange up to 3,000 acres in the State forest for lands or interests in lands owned by CNI or its Village Corporations. When CNI was negotiating its land exchange agreement, we were repeatedly denied nominations on 60,000 acres in the Yakataga area. If the State is now agreeable to such exchange rights, we feel we should have some opportunity to participate if Seldovia Native Association chooses not to up to 3,000 acres. In addition, if an exchange agreement is to be negotiated between CNI & DNR, we feel that an additional year will be necessary.

Sincerely,

CHUGACH NATIVES, INC.

Sam Bacino

Samuel J. Bacino
Vice President of Lands & Natural Resources

SJB:jdc

cc: Seldovia Native Association
Reed Stoops
Fred Boness

MEMORANDUM State of Alaska

TO: The Honorable Richard Eliason
Alaska State Senate

DATE: April 3, 1984

FILE NO:

TELEPHONE NO:

FROM: Robert D. Arnold
Deputy Commissioner
Department of Natural Resources

SUBJECT: SB 202 - Yakataga State Forest

The Department of Natural Resources has no objections to amending the CS for SB 202, Yakataga State Forest, to indicate that the up to 3,000 acres of land which may be exchanged is not limited to trades for private inholdings within Kachemak Bay State Park. To accomplish this, the words "for private inholdings within the Kachemak Bay State Park" could be deleted from lines 5 & 6 on page 3 of CSSB 202.

cc: John Sturgeon
State Forester

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
May 21, 1984

The Honorable John Ringstad
The Honorable Richard Schultz
Co-Chairs, House Resources Committee
Alaska Legislature
Room 116, Capitol Building
Juneau, Alaska 99801

Re: Yakataga State Forest [CS SB 202 (Fin)]

Dear Chairmen Ringstad and Schultz and Committee Members:

The League of Women Voters of Alaska supports enactment of the subject legislation. We hope your Committee will promptly report out the bill.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

DEC:sd
cc: Paula Ziegler (LWVAK President)

SB

216

Proposed amendment to CSSB 126 (REsources)

Page 2, line 7:

Add a new section to read:

* Sec. 3. AS 38.04.020 is amended by adding a new subsection to read:

(e) Notwithstanding other provisions of this title, lands within the disposal bank not proposed for disposal under (d) 2-4 of this section within the following three years shall be available for staking under the remote parcel program, provided that entries under this provision not be allowed within one-quarter mile of any existing private land or other remote parcel entry.

Offered: 4/20/83
Referred: Rules

Original sponsors: Fahrenkamp and Bennett

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 216 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to mining lease locations on, and classification of, state land; and providing for an effective date."

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

* Section 1. Section 5, ch. 108, SLA 1981, is amended to read:

Sec. 5. SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until December 31, 1985 [1983], minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on state land [TENTATIVELY APPROVED OR PATENTED TO THE STATE UNDER SECTION 6(a) OR 6(b) OF THE ALASKA STATEHOOD ACT (P.L. 85-508, 72 STAT. 339, AS AMENDED)] upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.-05.205.

* Sec. 2. AS 38.04.020(c) is amended to read:

(c) Land to be retained in state ownership may be classified by the commissioner into multiple-use management categories under AS 38.-05.300. [LAND WITHIN A MUNICIPALITY RETAINED IN STATE OWNERSHIP CONSISTS OF LAND CLASSIFIED FOR RETENTION IN STATE OWNERSHIP AS OF DECEMBER 31, 1980.] Land outside a municipality to be retained in state ownership consists of land classified for retention in state ownership by the commissioner by ~~July 1,~~ Dec 1, 1983 1985 [1983]. Land conveyed to the state by the federal government that is to be retained in state

ownership consists of land classified by the commissioner within two years of receipt of tentative approval or patent, whichever occurs first. State land not classified for retention in state ownership or selected by the municipality under this section shall be classified and included in the land disposal bank. The commissioner shall ensure that the bank includes at least 500,000 acres.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Sec 3 38.04

ownership consists of land classified by the commissioner within two years of receipt of tentative approval or patent, whichever occurs first. State land not classified for retention in state ownership or selected by the municipality under this section shall be classified and included in the land disposal bank. The commissioner shall ensure that the bank includes at least 500,000 acres.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Add new Section 3 Renumber remaining section 38.04.020 add. new (e) + number accordingly to reflect addition

(e.) Notwithstanding other provisions of this title lands within the disposal bank not proposed for disposal under (d) 2-4 of this section within the following five years shall be available for staking under the remote parcel program provided that applications under this provision may be allowed within the boundaries of any existing private land or other remote parcel entry.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

555 Cordova Street
Pouch 7-005
Anchorage, AK 99510
(907) 276-2653

Briefing Statement on CSSB 216

"An Act relating to mining lease locations on, and classification of, state land; and providing for an effective date."

CSSB 216 would extend two deadlines, one for the issuance of mining leases and the other for classifying land in the unorganized borough, and would make related housekeeping changes.

Mining Leases Under AS 38.05.185, about 15% of state lands have been designated as having "potential use conflicts" that require mining claims to be converted to leases before mineral production begins. (The department can also designate land for leasing if it was "mineral in character" at the time of state selection, but this authority has never been exercised.) The lease terms can then be designed to minimize conflicts with multiple use development occurring at the same site: gravel extraction, logging, recreational use, oil production, etc. However, no leases have been issued yet, and a backlog of perhaps 60-100 mine sites awaits conversion to leases. So that mining development would not be delayed, legislation was passed in 1981 to provide a special grace period allowing many miners to produce without a lease until Dec. 31, 1983. The department supported that legislation and hoped to be able to draft a lease form, update its leasing regulations, complete title research, give public notice, and issue all the necessary leases before the deadline arrived.

But because of other new mineral programs undertaken during the same period (coal and geothermal lease sales, noncompetitive coal disposals, initiation of the coal surface mining program, and offshore mining leases), that schedule has proven impossible to meet. To avoid interrupting or delaying production from existing mines, the department urges that the grace period be extended to the end of 1985. The department also favors the other mining lease-related change CSSB 216 would accomplish: making the grace period applicable to leasehold locations on all state lands. The current postponement of the leasing requirement applies only to "community grant" and "general grant" lands, omitting mines on mental health lands, placer mines on the beds of navigable rivers, etc. This potential inequity should be corrected so that production can legally continue while the department completes the necessary steps in the leasing process.

Land Classification in the Unorganized Borough AS 38.04.020(c) required classification by December 31, 1980, of all land that was to be retained in state ownership within municipalities. For land in the unorganized borough, it sets a classification deadline of July 1, 1983. A multi-agency special project enabled the 1980 deadline to be met on shedule. (Since that provision is now obsolete, CSSB 216 would repeal it.) However, two factors have convinced the department that a similar effort to meet the 1983 unorganized borough deadline would not be an efficient use of staff time.

First, in the unorganized borough the department lacks the detailed resource information necessary for knowledgeable classifications. Much of this information will be developed over the next two years as the Susitna, Tanana, and Bristol Bay area plans are completed and new planning projects are undertaken in the Kuskokwim and Copper River regions. Classifying that land now would be premature and would soon have to be done over again as the data becomes available. Secondly, the department has recently adopted new land planning and classification regulations, but they are still being reviewed by the Department of Law and have not yet gone into effect. The amended regulations eliminate certain classifications (including greenbelt and resource assessment), combine others, and add several new mineral classifications. The department would prefer that any extensive classification project in the unorganized borough be based on its new regulations, rather than on the system currently in effect. A two-year extension of the deadline will allow this change to take place.

BN Arnold

Bob Arnold, Deputy Commissioner
Department of Natural Resources

May 2, 1983

Date

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

555 Cordova Street
Pouch 7-005
Anchorage, AK 99510
(907) 276-2653

Briefing Statement on CSSB 216

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But because of other new mineral programs undertaken during the same period (coal and geothermal lease sales, noncompetitive coal disposals, initiation of the coal surface mining program, and offshore mining leases), that schedule has proven impossible to meet. To avoid interrupting or delaying production from existing mines, the department urges that the grace period be extended to the end of 1985. The department also favors the other mining lease-related change CSSB 216 would accomplish: making the grace period applicable to leasehold locations on all state lands. The current postponement of the leasing requirement applies only to "community grant" and "general grant" lands, omitting mines on mental health lands, placer mines on the beds of navigable rivers, etc. This potential inequity should be corrected so that production can legally continue while the department completes the necessary steps in the leasing process.

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First, in the unorganized borough the department lacks the detailed resource information necessary for knowledgeable classifications. Much of this information will be developed over the next two years as the Susitna, Tanana, and Bristol Bay area plans are completed and new planning projects are undertaken in the Kuskokwim and Copper River regions. Classifying that land now would be premature and would soon have to be done over again as the data becomes available. Secondly, the department has recently adopted new land planning and classification regulations, but they are still being reviewed by the Department of La.. and have not yet gone into effect. The amended regulations eliminate certain classifications (including greenbelt and resource assessment), combine others, and add several new mineral classifications. The department would prefer that any extensive classification project in the unorganized borough be based on its new regulations, rather than on the system currently in effect. A two-year extension of the deadline will allow this change to take place.

BN Arnold

Bob Arnold, Deputy Commissioner
Department of Natural Resources

May 2, 1983

Date

required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

(b) The failure on the part of a mining lessee or a locator to comply strictly with AS 38.05.185 — 38.05.280 and regulations adopted under it does not invalidate his rights if it appears to the satisfaction of the commissioner that the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person. Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to AS 38.05.185 — 38.05.280. (§ 1 art IX ch 169 SLA 1959; am § 19 ch 61 SLA 1960; am § 1 ch 123 SLA 1961; am § 1 ch 108 SLA 1981)

Effect of amendments. — The 1981 amendment added the fourth through sixth sentences of subsection (a).

Sec. 38.05.205. Mining leasing. (a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 — 38.05.280 in or on state lands, other than submerged lands, which are open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located lands are available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located lands are not available for leasing, notice shall be given the locator by the director and the locator's prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 — 38.05.280 lying within the boundaries of his lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) Beginning on the date established by the commissioner under AS 38.05.210 there shall accrue an annual rental for each leasehold location or portion thereof whether or not under lease, not less than the value of annual labor improvements required for mining claims. The value of work done on, or for the benefit of, the leasehold in compliance with AS 38.05.210 may be credited against the rental.

(c) A mining lease shall be for any period up to 55 years, and the lessee has a right to a new lease at the end of each lease period. The

commissioner may make reasonable adjustments of the rental rate at the end of each 20 year period, based upon changed conditions in production costs and markets. A valid mining claim located and held under AS 38.05.195 may be converted to a lease at any time upon application by the owner, and issuance by the director. No rights granted by a mining lease may be exercised until the lease has been filed for record in the recording district where the land is located. (§ 4 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 108 SLA 1981)

Effect of amendments. — The 1981 amendment in subsection (a), added "the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued" at the end of the third sentence, added the present fourth sentence, added "unless a conflicting location exists, no later than two weeks after publication of the notice" at the beginning of the fifth sentence, deleted "upon request or upon receipt of notice that the location has been made on lands open only for leasing" at the end of the fifth sentence, substituted "the locator's" for "his" preceding "prior rights" in the sixth sentence and added "or location" following "lease" in the seventh sentence.

Editor's notes. — Section 5, ch. 108, SLA 1981 provides: "SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until December 31, 1983, minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on land tentatively approved or patented to the state under section 6(a) or 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339, as amended) upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.05.205."

Sec. 38.05.207. Production license [Effective January 1, 1983]. (a) An application for a production license must be filed with the commissioner when a locator of a mining claim under AS 38.05.195 or a lessee of a mining location under AS 38.05.205 is prepared to produce minerals for sale in commercial quantities. The application shall state under oath the location of the land and ownership of the mineral deposits involved in the mining operation and the date production began or is expected to begin. Upon receipt of an application, the commissioner shall publish in a paper of general circulation in the area of the location notice of the application and notice that a production license will be issued. The notice may be combined with notices of other applications either in the same general area or statewide. Pending completion of this public notice requirement and issuance of the production license, the locator or lessee has the right to produce minerals from the property.

(b) If the commissioner determines under AS 38.05.185(b) that a locator or lessee has complied as nearly as possible under the circumstances of the case with the provisions of AS 38.05.185 — 38.05.280 and that no conflicting rights are asserted by any other person, the commissioner shall issue a transferable production license for mineral extraction. If conflicting rights are asserted the commissioner may resolve the conflict. (§ 2 ch 87 SLA 1982)

(6) corporations organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state, except that if more than 50 per cent of the stock of a corporation is owned or controlled by aliens who are not qualified, the corporation is not qualified to acquire or hold such rights.

(b) If an unqualified person acquires an interest in exploration or mining rights by operation of law, he shall be allowed two years in which to become qualified or to dispose of his interest to a qualified person. (§ 2 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961)

Sec. 38.05.195. Mining claims. Rights to deposits of minerals subject to §§ 185 — 280 of this chapter in or on state lands which are open to claim staking may be acquired by discovery, location and filing as prescribed in §§ 185 — 280 of this chapter. The locator has the exclusive right of possession and extraction of all such minerals lying within the boundaries of his claim. A location may not exceed 1,320 feet in its longest dimension, and its boundaries shall run in the four cardinal directions. A location shall be distinctly marked on the ground in the manner prescribed by the commissioner and a notice of location shall be posted on the claim in the manner and containing the information required by the commissioner. Within 90 days after the date of posting the notice of location on the claim, the locator shall file for record in the recording district where the claim is located a certificate of location. The certificate of location shall contain the information required by the commissioner. Locations may be amended in the manner and with the effect prescribed in § 200 of this chapter. Annual labor shall be performed and statements of annual labor recorded as prescribed in §§ 210 — 235 of this chapter. (§ 3 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961)

Cited in Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Sec. 38.05.200. Changes in locations and amended notices. Notices may be amended at any time and monuments changed to correspond with the amended location but no change may be made which interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location shall be filed for record in the same manner and with the same effect as the original certificate. (§ 47-3-34 ACLA 1949)

Revisor's note (1962). — This section was applied to state-owned lands by ch. 123, SLA 1961.

Am. Jur. reference. — 36 Am. Jur., Mines and Minerals, § 99 et seq.

Sec. 38.05.205. Mining leasing. (a) Prior discovery location and filing shall initiate prior rights to mineral deposits subject to §§ 185 — 280

Sec. 38.05.300. Classification of lands. (a) The commissioner shall classify for surface use lands in areas where he considers it necessary and proper. This section does not prevent reclassification of lands where the public interest warrants reclassification, nor does it preclude multiple purpose use of lands whenever different uses are compatible. No state land, water, or land and water area shall, except by act of the state legislature, be closed to multiple purpose use, if the area involved contains more than 640 acres.

(b) Not later than February 1 of each year, the commissioner shall submit a written report to each house of the legislature which describes and shows the location of all classifications of state land made under (a) of this section during the preceding year. (§ 1 art III ch 169 SLA 1959; am § 2 ch 31 SLA 1964; am §§ 33, 34 ch 85 SLA 1979)

Effect of amendments. — The 1979 amendment added the subsection (a) designation, and in that subsection, substituted "commissioner shall classify for surface use lands" for "director shall make a preliminary classification for surface use of all land" in the first sentence, deleted "for future development" from the end of the first sentence, and deleted the former second sentence, which read: "The classification, together with a land use plan, shall be transmitted to the commissioner for his approval, modification, or rejection." The amendment also added subsection (b).

Editor's notes. — As to effect of redesignating mental health land as general grant land on use classifications under this section, see § 3(b), ch. 181, SLA 1978 in the 1978 Temporary and Special Acts and Resolves.

As to effect of redesignating mental health land and school land as general grant land on use classifications under this section, see §§ 1 — 2, ch. 182, SLA 1978 in the 1978 Temporary and Special Acts and Resolves.

Sec. 38.05.301. Land disposal in the unorganized borough. Before a sale, lease under AS 38.05.070 — 38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or other disposal may be expected to have on the density of the population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If he finds it necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of AS 38.05.005 — 38.05.370. (§ 33 ch 113 SLA 1981)

Sec. 38.05.305. Notice and review.

Repealed by § 45 ch 113 SLA 1981.

Cross references. For provisions on notice requirements, see AS 38.05.345.

Editor's notes. — The repealed section derived from § 2, art. III, ch. 169, SLA 1959; § 11, ch. 257, SLA 1976; §§ 35, 36, ch. 85, SLA 79; § 3, ch. 108, SLA 1981.

Sec. 38.05.310. Appraisal. (a) No land may be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within 120 days before the date fixed for the sale or lease. When land is offered at public sale but is not sold and

Chapter 108

AN ACT

Relating to mineral leasing; and providing for an effective date.

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* Section 1. AS 38.05.185(a) is amended to read:

(a) The acquisition and continuance of rights in and to deposits on state lands of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 - 38.05.280. Nothing in AS 38.05.185 - 38.05.280 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine those lands from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, those lands which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

* Sec. 2. AS 38.05.205(a) is amended to read:

(a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 - 38.05.280 in or on state lands, other than submerged lands, which are open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located lands are available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director [UPON REQUEST OR UPON RECEIPT OF NOTICE THAT THE LOCATION HAS BEEN MADE ON LANDS OPEN ONLY FOR LEASING]. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located lands are not available for leasing, notice shall be given the locator by the director and the locator's [HIS] prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 - 38.05.280 lying within the boundaries of his lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

* Sec. 3. AS 38.05.305 is amended by adding a new subsection to read:

(e) The provisions of this section do not apply to a lease issued under AS 38.05.205.

* Sec. 4. AS 38.05.345 is amended by adding a new subsection to read:

(h) The provisions of this section do not apply to a lease issued under AS 38.05.205.

* Sec. 5. SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until December 31, 1983, minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on land tentatively approved or patented to the state under section 6(a) or 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339, as amended) upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.05.205.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Alaska State Legislature

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

April 15, 1983

Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: Hearing, Instream Flow Oversight; SB 216, Mineral leasehold extension; SJR 24, Natural Gas Deregulation and Contract Abrogation.

Background information on Instream Flow is being sent under separate cover.

SB 216

AS 38.05.185 provides that on state lands of mineral character or lands where significant land use conflicts exist mining claims would convert to leases prior to production. Because of the numbers of claims on such lands going into the production of placer gold and the inability of the Department of Natural Resources to convert the claims to leases, in 1981 the Legislature passed a bill to permit production on regular claims to proceed until December 31, 1983 without having to convert to a lease.

Attached is a memorandum from Kay Brown, Director of DMEM, explaining the difficulties the Department is having in complying with the lease provisions for the large number of claims by the 1983 deadline. SB 216 would move the deadline for such conversions to December 31, 1985 to enable the Department to prepare the lease form and procedures, to process the mining claims on affected state lands, and to study the entire leasehold system and recommend possible changes in existing law and regulation.

Amendment to SB 216 – Adopted

Another provision of Title 38 dealing with land issues which involves a deadline which can not be administratively met is AS 38.04.020(c). This section requires the Department to classify all state lands to be retained in state ownership by July 1, 1983. Lands not so classified would be included in the land disposal bank for possible disposal.

The classification process is lengthy and normally done in conjunction with land use plans for certain regions or areas of the state. This planning and classification process is not yet completed for several areas of the state and the identification of all lands which might be recommended for retention in state ownership has not been done nor will it be done by July of this year.

The attached letter from the DNR requests an amendment to SB 216 to extend the deadline for the classification of land to be retained in state ownership from July 1, 1983 to July 1, 1985. In addition, it is recommended that language pertaining to state lands recommended for retention in municipalities be deleted. This work has already been completed and the language is moot.

SJR 24

The Reagan Administration has introduced legislation (S 615) amending the Natural Gas Policy Act of 1978. The Administration's proposal attempts to combine phased decontrol of gas prices with measures enabling pipelines and producers to get out of long-term contracts that are believed to be keeping gas prices high. A summary of the key points of this legislation is attached.

SJR 24 requests that Congress exempt the State of Alaska from section 316 of the Administration bill. Section 316 allows the abrogation of existing natural gas supply contracts. Section 316 is also attached for your information.

The current price of gas sold to Chugach Electric for example is 26¢. It is estimated that if the Administration's proposal passed intact as now drafted, this price could increase to $2.50 and above. The Department of Natural Resources has stated that the request for this exemption is consistent and in accord with official State position.

Additional attachments have been included for your information.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SB 216
Title: Extending deadline for leasehold locations
Sponsor: Fahrenkamp and Bennett
Requestor: Senate Resources

II. FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: Mgmt. of Min.
BRU, Program of Subprogram(s) Affected: Mineral Development

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0			
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0			

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	0	0	0			

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mark Wittow — Mark Wittow — Phone: 465-2400
Division: Commissioner's Office — Date: 4/13/83

Approved By Commissioner: Mark Wittow — Date: 4/13/83
Department: Natural Resources

Distribution:
Original to Legislative Finance
→ Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO:
ESTHER C. WUNNICKE
Commissioner

DATE: February 2, 1983

FILE NO:

TELEPHONE NO.

SUBJECT: 276-2853
Mining Leasing under AS 38.05.205

FROM:
KAY BROWN
Director

to Pat Burdett

This memorandum is intended as an update on our progress toward implementation of the mining lease-statute (AS 38.05.205) and to notify you of the major problems we have encountered. At a minimum, legislative action is needed this session to extend the implementation deadline; a provision to accomplish this is included in DNR's Title 38 housekeeping bill. Additional amendments may be necessary to correct the ambiguities we have found and to make the program workable.

Background

Alaska law allows the appropriation of locatable minerals through three different methods:

- on tidelands and submerged lands, a leasing process similar to that for coal or other leasable minerals is used;
- on most uplands open to mining, ordinary mining claims can be staked;
- on uplands identified as mineral lands or where conflicts with other land uses could occur, "leasehold locations" are required. They are initiated in the same way as mining claims--with discovery, location, and filing--but must be converted to leases before production can occur. Few or no such conversions have ever taken place. In 1981, with many placer mines producing or ready to produce because of rising gold prices, the Legislature passed ch. 108, SLA 1981, which allowed production to continue until Dec. 31, 1983, or until the miner receives a lease application from DNR, whichever comes first.

With the lease exemption due to expire, DMEM has been working to prepare a basic lease form, to estimate the workload involved (DMEM calculates that 4,500 to 6,000 of the total 44,000 state mining claims are on land designated for leasehold locations; these locations are in approximately 300-600 contiguous blocks that could each eventually require a lease; if the deadline is not extended, probably 60-100 of these will need a lease this year in order to produce or continue production in 1984), and to determine the legal requirements that must be met before issuing the leases (see attached request for an attorney general's opinion).

Problems and Potential Legislative Solutions

We do not yet have final answers to our legal questions, but preliminary analysis by DNR and the Department of Law has pointed out the following obstacles.

° Timing of lease issuance is critical. As it stands, the law might be interpreted to require DMEM to initiate the leasing process within a few weeks or months after it learns of a new leasehold location, rather than waiting until production plans are underway (usually many years later). Since the majority of locactions lapse without ever being developed, most such leases would serve no purpose. And the mining lease workload would be 300-600 leases instead of a more manageable 60-100. With the ambitious schedule facing DMEM in its other mineral programs (new or newly reopened coal, geothermal, and offshore mining lease projects, plus a DMEM processing backlog of some 4,000 mining claims, and almost 11,000 additional mining claims that have been awaiting adjudication for up to eight months because DTS does not have the staff to enter them onto the state status plats and other land records), we cannot afford to tackle a years-old backlog of mining lease conversions all at once. Possible solutions: Amending AS 38.05.205 may be necessary to let us delay leasing until the locator specifically requests a lease or is ready to go into production. In addition, the Dec. 31, 1983 deadline should be postponed. DNR's Title 38 housekeeping bill would extend the deadline only one year, but the actual time needed to implement the program will depend on funding. After the housekeeping bill was drafted, the department's proposed FY84 increment for mining leasing was eliminated from the budget.

° Issuance of a mining lease is probably a "disposal" of an interest in land.* Moore v. State, 553 P.2d 8, 26 (Alaska 1976). If so, DNR must make a "best interest" determination under AS 38.05.035(a)(14) before issuing a lease. Disposal procedures must also meet the constitutional requirements of "prior public notice and other safeguards of the public interest as may be prescribed by law." Art. VIII, sec. 10. The Department of Law's tentative legal conclusion is that the notice provided for in AS 38.05.205 satisfies the minimal constitutional notice requirements.

However, timing of notice under AS 38.05.205 (it must be given before the locator applies for the lease) limits its utility somewhat. A more logical time for public notice is after the locator's lease application has been received and the "best interest" determination has been drafted. Yet for administrative reasons, DMEM does not want to give notice twice. (For nearly all other disposals, notice is handled under AS 38.05.345. This statute requires only one public notice for

* Another view is that, since the lease application cannot be denied, the disposal has already taken place. Lack of discretion to deny the lease raises issues too complex to set out in this memorandum.

noncompetitive disposals, given when the best interest determination is ready to review; local government receives notice at the same time. Mining leases are specifically exempted from AS 38.05.345.) Another complication is that after the lease is issued, the lessee must get a separate production license (AS 38.05.207) before production can occur. This statute requires still another notice. Possible solutions: The early notice provision could be deleted from AS 38.05.205 and the mining lease exemption removed from AS 38.05.345, allowing notice of mining leases to be given in the same way as for other noncompetitive disposals. At the same time, AS 38.05.207 could be amended to allow the production license to be issued simultaneously with the lease, so that no extra notice would be necessary. Alternatively, all references to mining leases could be dropped from AS 38.05.207, leaving it applicable only to ordinary locations. That statute was intended to satisfy the "6(i)" leasing mandate under the Statehood Act, but to require both a lease and a production license seems superfluous.

- Discovery, location, and filing are the prerequisites to leasing. Whether the proper documents have been timely recorded can readily be checked, but it would be difficult and expensive to do a "validity determination" (to establish whether each location contains a discovery) before issuing the lease. DNR has never done a validity determination. The discovery requirement should not be dropped--in fact it could not be without a constitutional amendment--but it does create a serious administrative problem. Possible solutions: AS 38.05.205 could be amended to give the locator the option of either paying for a validity determination before the lease is issued, or accepting a short-term lease (perhaps five years) that would expire if no production took place. If production occurred, it would provide retroactive proof that at least one discovery existed within the leasehold, and the lease would automatically be renewed. As another option, it might be sufficient for the locator to sign an affidavit that he or she had made a discovery within each location. This alternative could probably be put into effect by regulation, without having to amend AS 38.05.205.

- A field check would also be necessary to determine whether the location had been properly staked. Here again, DNR has never done such field checks, although this sort of investigation would be much easier and cheaper than a validity determination. Possible solutions: Perhaps the locator could simply sign an affidavit attesting to proper staking. Alternatively, DNR could either seek funding to check for proper staking before converting the location to a mining lease, or AS 38.05.205 could be amended to require the locator to supply such proof. A more costly but ultimately more satisfactory solution would be to require a survey of the staked boundaries, which would also ensure the accuracy of the legal description stated in the lease. (Without a survey, the location must be plotted on the status plats, and its legal description written, on the basis of the miner's sketch map.)

Enclosure

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO: Barbara Herman
Assistant Attorney General, DOL

DATE: October 29, 1982

FILE NO:

TELEPHONE NO: 276-2653

FROM: Kay Brown, Director
DMEM

SUBJECT: Mining Leasing under AS 38.05.205

The Division of Minerals and Energy Management is preparing to implement AS 38.05.205 and the special provision for mining leasehold locations passed by the 1981 legislature (Sec. 5, Ch. 108; SLA 1981). We would appreciate receiving your thoughts on the following issues as soon as possible.

1. Extent of discretion. In an area open to leasing, we assume that the director must issue a mining lease for a location filed under AS 38.05.205(a); the director's authority extends only to choosing the lease's terms and conditions within statutory limits. Similarly, we assume that he or she cannot refuse to convert a valid mining claim to a lease under AS 38.05.205(c). Is this interpretation correct?

2. Director's finding. We assume that issuance of a mining lease under AS 38.05.205 is a disposal of an interest in land under AS 38.05.035(a)(14) and therefore requires a best interest finding under that section. Is this correct? We assume that the finding should cover discretionary issues such as the stipulations that will be imposed to resolve conflicts with other uses. Are there any issues that must be addressed in every .035 finding for a mining lease? If the best interest determination shows that issuance of the lease would not serve the best interests of the state, what is the resolution if the director does not have the discretion to deny a lease?

3. Validity determination. Prior discovery, location, and filing in a leasehold location area, or a valid mining claim anywhere, entitles the locator to convert to a lease. By implication, a locator who has not fulfilled these three requirements is not entitled to a lease. Prior to the issuance of a mining lease under 38.05.205, should a validity determination be made?

4. Rent accrual. The department interprets AS 38.05.205(b) to mean that beginning on Sept. 1 following staking of a leasehold location (the date is set by 11 AAC 86.220), annual rental begins to accrue at the minimum rate of $200 per location per year, whether or not a lease has already been issued. Payment must be made each year, either in cash or (far more typically) in the form of annual labor benefitting the leasehold location. If the locator neither pays the rent nor offsets it by recording an annual labor affidavit, and does not correct the situation after notice from DMEM, the leasehold location is deemed abandoned. Is this procedure, which is reflected in 11 AAC 86.300, a reasonable and supportable interpretation of the statute? (Should 11 AAC 86.300 be amended to be consistent with the statute by changing the last "or" to an "and"?)

5. ACMP consistency. If the location is within the coastal zone, is the issuance of a lease under AS 38.05.205 subject to review for consistency with the Alaska Coastal Management Program? What is the result if it is not consistent?

6. Segregation. Is our interpretation that the filing of an offshore prospecting permit application segregates the tidelands and submerged lands involved, so that a mining claim or leasehold location cannot be staked on top of it under 11 AAC 86.135(c), a correct one?

7. Timing. The department's past practice has been not to immediately send a lease application to a locator who has filed in a leasehold location area. The department prefers to postpone the leasing process until the locator is actually ready to go into production. Can this procedure be continued under the amended AS 38.05.205(a), or does the statute force DMEM to publish notice of the leasehold location as soon as it learns of it?

8. Procedures. The following is our understanding of the major legal requirements that must be satisfied in issuing a lease under AS 38.05.205(a).

- As soon as the location notice is received, or at an appropriate time thereafter (the timing depends on your answer to our previous question), the director publishes a notice in compliance with AS 38.05.205(a). Only one notice is required; it advertises that the location was filed and that, if there is no conflicting location, a lease will be issued.

- No later than two weeks after the notice was published, but allowing as much of that two-week period as possible for other locators to respond to it, the division sends a lease application form to the locator if it has not learned of any conflicting claim. AS 38.05.205(a).

- Within 90 days after receipt of the application, the locator must fill it out and file it with the director. AS 38.05.205(a).

- After the application is received, a director's decision under AS 38.05.035(a)(14) is crafted. If the location is in the coastal zone, a determination that the lease is consistent with the Alaska Coastal Management program is also made. If the location is within the unorganized borough, a commissioner's finding as to the disposal's effects on population density, and its potential for conflicts with traditional land uses, is also written under AS 38.05.301. If the location includes or is adjacent to waters, the department determines whether those waters are navigable or public under AS 38.05.127. If they are, and if surface development in connection with the lease might

restrict public access rights to and along those waters, easements or rights-of-way are reserved in accordance with the implementing regulations (11 AAC 53.) (However, if the department does not yet know how the lease will be developed, it will not specify the easements in the conveyance document, but as a lease stipulation will retain the right to reserve them later if necessary to protect public access. This is the procedure DMEM has been following with other mineral leases.)

- We cannot determine whether notice of the director's decision is supposed to be given, and if so, under what procedures. Director's decisions for all other types of disposals are advertised under AS 38.05.34(A)(3), but AS 38.05.345(e) certainly seems to exempt decisions in connection with mining leases from this requirement. Does this mean that, even though the director's decision must be written, no notice need be given that it is available for review? Is the original notice under AS 38.05.205(a)--which was given well before the terms of the disposal and conditions were decided on (in fact, before the lease application was filed)--the only public notice legally and constitutionally required? Would this original notice also serve as notice to the municipality or, in the unorganized borough, to local residents?

- If you determine that AS 38.05.345 notice of the decision is required, AS 38.05.346 would presumably also apply.

- If notice must be given under AS 38.05.345, at least 30 days must pass before the lease is issued. If no notice is required, presumably the only time limit is that at least 21 days must pass after the director's decision is written.

- We assume that, although a mining lease will include certain surface use rights, it is not a disposal of the surface estate and the survey requirements of AS 38.04.055(b) do not apply. It is also exempt from the appraisal requirement of AS 38.05.310.

Is our understanding of these requirements correct and comprehensive? What have we missed?

9. Voluntary conversions. Which of these procedures would apply to a voluntary conversation of a mining claim to a lease under AS 38.05.205(c)? For instance, would the director be required to give a preliminary notice under AS 38.05.205(a) that the location had been filed and that a lease would be issued? Would the locator be bound by the 90-day application deadline?

10. University lands. If the location is on university lands, the Board of Regents must be notified before the lease is issued (AS 38.05.030(a)). What happens if it withholds its approval?

cc: John Katz

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M May 19, 1983

SUBJECT: Classification of state land
(SB 216)

TO: Representative Richard Shultz
Chairman, House Resources Committee

FROM: Richard C. Folta
Legislative Counsel

It is my opinion that adding to the above referenced bill the proposed provisions for sale of a leasehold by the state to a leaseholder requires a title amendment in SB 216. Under Uniform Rule 24(c), a bill title may not be amended in the second house unless the amendment is a clerical or technical change. The amendment, in this instance, could only be accomplished in the Senate.

RCF:ljb
20/027

Sen. Bettye Fahrenkamp

TESTIMONY BEFORE THE HOUSE RESOURCES COMMITTEE

SB 216, MAY 13, 1983

Mr. Chairmen, members of the Committee, I apologize for not being able to testify today in person but I am chairing a meeting of the Senate Resources Committee during this same time period.

However, I would like give my strong endorsement to SB 216 and urge the Committee to take swift action on this measure. The bill simply extends the moratorium currently in existence for converting mining claims to mineral leases for another two years. This extension is necessary for the Department of Natural Resources to continue to develop the leasehold system prescribed by law and to identify additional legal and technical problems which have surfaced. Within two years it is quite possible that the Department will recommend to the legislature changes which may be needed in current law regarding the leasehold system.

In addition, the Senate Resources Committee adopted an amendment to the bill which would also extend another deadline in Title 38 for an additional two years. Current statutes call for the state to identify all state lands to be retained in state ownership by July 1, of this year. Lands not identified would fall automatically into the land disposal bank. Land identification by the state has preceded after land use planning has been completed which has taken some time. There simply is not sufficient time to complete the planning and the subsequent classification process by the July 1, 1983 deadline. Rather than interrupting this reasoned, phased process to land classification, an extension is warranted. Such an extension will have no impact on the amount of land to be disposed of as current lands in the disposal bank far exceed annual disposals well into the future.

Thank you for this opportunity to present my views on this legislation.

Thank you

SENATOR BETTYE FAHRENKAMP

SB 216, MINING LEASE LOCATION MORATORIUM EXTENSION

BACKGROUND

STATE LAW PROVIDES THAT ON STATE LANDS OF MINERAL CHARACTER OR WHERE LAND USE CONFLICTS EXIST MINING CLAIMS WHICH ARE STAKED WOULD CONVERT TO MINING LEASES PRIOR TO PRODUCTION.

IN 1981 THE LEGISLATURE EXTENDED THE DEADLINE FOR CONVERSION OF CLAIMS TO LEASES UNTIL DEC. 31, 19 83 BECAUSE OF THE DRAMATIC INCREASE IN PLACER GOLD CLAIMS ENTERING PRODUCTION WITH THE RISE IN GOLD PRICES AND THE ABSENCE OF MINERAL LEASE PROCEDURES AT THAT TIME.

CURRENT SITUATION

DNR REPORTS THAT WITH THE PROSPECTS OF HAVING TO CONVERT HUNDREDS, IF NOT THOUSANDS OF CLAIMS, AND THE TECHNICAL PROBLEMS WHICH STILL EXIST WITH THE MINERAL LEASE LOCATION SYSTEM, THE DEPARTMENT WOULD BE UNABLE TO MEET THE DECEMBER DEADLINE THIS YEAR. THEY ARE REQUESTING AN EXTENSION TO FURTHER STUDY AND EXPLORE THE PROBLEMS AND PROCEDURES OF MINERAL LEASE LOCATION SYSTEM AND POSSIBLY TO RECOMMEND CHANGES IN THE LAW.

added in Committee Substitute

ADDITIONALLY, ANOTHER PROVISION OF TITLE 38 REQUIRES DNR TO CLASSIFY ALL STATE LANDS TO BE RETAINED IN STATE OWNERSHIP BY JULY 1, 1983. LANDS NOT SO CLASSIFIED WOULD BE INCLUDED IN THE LAND DISPOSAL BANK FOR POSSIBLE DISPOSAL. BECAUSE OF DNR'S PLANNING PROCESS PRIOR TO CLASSIFICATION, THIS DEADLINE IS NOT GOING TO BE MET. HAVING THE LANDS GO TO THE DISPOSAL BANK SERVES NO USEFUL PURPOSE AND IN NO WAY WOULD REDUCE THE ANNUAL LAND DISPOSALS (THERE ARE OVER 600,000 ACRES IN THE DISPOSAL BANK CURRENTLY FROM WHICH 60,000 WILL BE DISPOSED THIS YEAR).

BILL'S PROVISIONS

THE BILL EXTENDS THE LEASE CONVERSION MORATORIUM FOR TWO MORE YEARS UNTIL DEC. 1985. THE BILL ALSO EXTENTS THE LAND CLASSIFICATION DEADLINE TWO YEARS UNTIL JULY 1, 1985.

Chapter 108

AN ACT

Relating to mineral leasing; and providing for an effective date.

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* Section 1. AS 38.05.185(a) is amended to read:

(a) The acquisition and continuance of rights in and to deposits on state lands of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 - 38.05.280. Nothing in AS 38.05.185 - 38.05.280 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine those lands from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, those lands which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

* Sec. 2. AS 38.05.205(a) is amended to read:

(a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 - 38.05.280 in or on state lands, other than submerged lands, which are open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located lands are available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director [UPON REQUEST OR UPON RECEIPT OF NOTICE THAT THE LOCATION HAS BEE MADE ON LANDS OPEN ONLY FOR LEASING]. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located lands are not available for leasing, notice shall be given the locator by the director and the locator's [HIS] prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 - 38.05.280 lying within the boundaries of his lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

* Sec. 3. AS 38.05.305 is amended by adding a new subsection to read:

(e) The provisions of this section do not apply to a lease issued under AS 38.05.205.

* Sec. 4. AS 38.05.345 is amended by adding a new subsection to read:

(h) The provisions of this section do not apply to a lease issued under AS 38.05.205.

* Sec. 5. SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until December 31, 1983, minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on land tentatively approved or patented to the state under section 6(a) or 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339, as amended) upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.05.205.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO: Barbara Herman
Assistant Attorney General, DOL

DATE: October 29, 1982

FILE NO:

TELEPHONE NO: 276-2653

FROM: Kay Brown, Director
DMEM

SUBJECT: Mining Leasing under AS 38.05.205

The Division of Minerals and Energy Management is preparing to implement AS 38.05.205 and the special provision for mining leasehold locations passed by the 1981 legislature (Sec. 5, Ch. 108, SLA 1981). We would appreciate receiving your thoughts on the following issues as soon as possible.

1. Extent of discretion. In an area open to leasing, we assume that the director must issue a mining lease for a location filed under AS 38.05.205(a); the director's authority extends only to choosing the lease's terms and conditions within statutory limits. Similarly, we assume that he or she cannot refuse to convert a valid mining claim to a lease under AS 38.05.205(c). Is this interpretation correct?

2. Director's finding. We assume that issuance of a mining lease under AS 38.05.205 is a disposal of an interest in land under AS 38.05.035(a)(14) and therefore requires a best interest finding under that section. Is this correct? We assume that the finding should cover discretionary issues such as the stipulations that will be imposed to resolve conflicts with other uses. Are there any issues that must be addressed in every .035 finding for a mining lease? If the best interest determination shows that issuance of the lease would not serve the best interests of the state, what is the resolution if the director does not have the discretion to deny a lease?

3. Validity determination. Prior discovery, location, and filing in a leasehold location area, or a valid mining claim anywhere, entitles the locator to convert to a lease. By implication, a locator who has not fulfilled these three requirements is not entitled to a lease. Prior to the issuance of a mining lease under 38.05.205, should a validity determination be made?

4. Rent accrual. The department interprets AS 38.05.205(b) to mean that beginning on Sept. 1 following staking of a leasehold location (the date is set by 11 AAC 86.220), annual rental begins to accrue at the minimum rate of $200 per location per year, whether or not a lease has already been issued. Payment must be made each year, either in cash or (far more typically) in the form of annual labor benefitting the leasehold location. If the locator neither pays the rent nor offsets it by recording an annual labor affidavit, and does not correct the situation after notice from DMEM, the leasehold location is deemed abandoned. Is this procedure, which is reflected in 11 AAC 86.300, a reasonable and supportable interpretation of the statute? (Should 11 AAC 86.300 be amended to be consistent with the statute by changing the last "or" to an "and"?)

5. ACMP consistency. If the location is within the coastal zone, is the issuance of a lease under AS 38.05.205 subject to review for consistency with the Alaska Coastal Management Program? What is the result if it is not consistent?

6. Segregation. Is our interpretation that the filing of an offshore prospecting permit application segregates the tidelands and submerged lands involved, so that a mining claim or leasehold location cannot be staked on top of it under 11 AAC 86.135(c), a correct one?

7. Timing. The department's past practice has been not to immediately send a lease application to a locator who has filed in a leasehold location area. The department prefers to postpone the leasing process until the locator is actually ready to go into production. Can this procedure be continued under the amended AS 38.05.205(a), or does the statute force DNEM to publish notice of the leasehold location as soon as it learns of it?

8. Procedures. The following is our understanding of the major legal requirements that must be satisfied in issuing a lease under AS 38.05.205(a).

- As soon as the location notice is received, or at an appropriate time thereafter (the timing depends on your answer to our previous question), the director publishes a notice in compliance with AS 38.05.205(a). Only one notice is required; it advertises that the location was filed and that, if there is no conflicting location, a lease will be issued.

- No later than two weeks after the notice was published, but allowing as much of that two-week period as possible for other locators to respond to it, the division sends a lease application form to the locator if it has not learned of any conflicting claim. AS 38.05.205(a).

- Within 90 days after receipt of the application, the locator must fill it out and file it with the director. AS 38.05.205(a).

- After the application is received, a director's decision under AS 38.05.035(a)(14) is drafted. If the location is in the coastal zone, a determination that the lease is consistent with the Alaska Coastal Management program is also made. If the location is within the unorganized borough, a commissioner's finding as to the disposal's effects on population density, and its potential for conflicts with traditional land uses, is also written under AS 38.05.301. If the location includes or is adjacent to waters, the department determines whether those waters are navigable or public under AS 38.05.127. If they are, and if surface development in connection with the lease might

restrict public access rights to and along those waters, easements or rights-of-way are reserved in accordance with the implementing regulations (11 AAC 53.) (However, if the department does not yet know how the lease will be developed, it will not specify the easements in the conveyance document, but as a lease stipulation will retain the right to reserve them later if necessary to protect public access. This is the procedure DMEM has been following with other mineral leases.)

- We cannot determine whether notice of the director's decision is supposed to be given, and if so, under what procedures. Director's decisions for all other types of disposals are advertised under AS 38.05.34(A)(3), but AS 38.05.345(e) certainly seems to exempt decisions in connection with mining leases from this requirement. Does this mean that, even though the director's decision must be written, no notice need be given that it is available for review? Is the original notice under AS 38.05.205(a)--which was given well before the terms of the disposal and conditions were decided on (in fact, before the lease application was filed)--the only public notice legally and constitutionally required? Would this original notice also serve as notice to the municipality or, in the unorganized borough, to local residents?

- If you determine that AS 38.05.345 notice of the decision is required, AS 38.05.346 would presumably also apply.

- If notice must be given under AS 38.05.345, at least 30 days must pass before the lease is issued. If no notice is required, presumably the only time limit is that at least 21 days must pass after the director's d[illegible] written.

- [illegible] that, although a mining lease will include certain surface use rights, it is not a disposal of the surface estate and the survey requirements of AS 38.04.055(b) do not apply. It is also exempt from the appraisal requirement of AS 38.05.810.

Is our understanding of these requirements correct and comprehensive? What have we missed?

9. Voluntary conversions. Which of these procedures would apply to a voluntary conversation of a mining claim to a lease under AS 38.05.205(c)? For instance, would the director be required to give a preliminary notice under AS 38.05.205(a) that the location had been filed and that a lease would be issued? Would the locator be bound by the 90-day application deadline?

10. University lands. If the location is on university lands, the Board of Regents must be notified before the lease is issued (AS 38.05.030(a)). What happens if it withholds its approval?

cc: John Katz

(1) the cash value offered;

(2) the projected effects of the sale, exchange or other disposal on the economy of the state;

(3) the projected benefits of refining or processing the oil or gas in the state;

(4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and

(5) the criteria listed in AS 38.06.070(a). (§ 1 ch 56 SLA 1970; am § 3 ch 9 SSSLA 1974; am §§ 9, 10 ch 112 SLA 1980)

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "after prior written notice to" for "with the prior written approval of" and "under AS 38.06.050" for "where applicable," near the end of the subsection; in subsection (b), substituted "after prior written notice to" for "with the prior written approval of"; in subsection (c), substituted "has been notified in writing of" for "where applicable has approved"; in subsection (d), deleted "with the approval of the Alaska Royalty Oil and Gas Development Advisory Board" following "until the commissioner"; and added subsection (e).

NOTES TO DECISIONS

Waiver of competitive bidding. — An initial waiver of competitive bidding and a second waiver at the time of amendment removed any obligation to open the contract to competitive bidding. McKinnon v. Alpetco Co., Sup. Ct. Op. No. 2413 (File No. 5546), 633 P.2d 281 (1981).

Article 7. Mining Rights.

Section	Section
185. Generally	207. Production license
205. Mining leasing	250. Tide and submerged lands

Sec. 38.05.185. Generally. (a) The acquisition and continuance of rights in and to deposits on state lands of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 — 38.05.280. Nothing in AS 38.05.185 — 38.05.280 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine those lands from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, those lands which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations

SB

222

COMMITTEE REPORT

HOUSE

(9) FURTHER:

(Returned to Resources 5/19/84)

5/19/84 Date: MAY 21 1984

The Committee on RESOURCES has had CSSB 222(Fin)(Title am)

"An Act relating to the responsibilities and functions of the Department of Natural Resources in connection with state land; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for CSSB 222 (RESOURCES) [X] same title [ ] new title

and recommends DO PASS

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

COMMITTEE REPORT

HOUSE

(9) FURTHER: FINANCE

4/26/94 Date: MAY 4 1994

The Committee on RESOURCES has had CSSB 222(Fin)(Title am

"An Act relating to the responsibilities and functions of the Department of Natural Resources in connection with state land; and providing for an effective date."

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Bradley
5/19/84

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 222 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the responsibilities and functions of the Department of Natural Resources in connection with state land; and providing for an effective date."

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

* Section 1. AS 19.30.060 is amended to read:

Sec. 19.30.060. PURPOSE. It is the purpose of AS 19.30.060 - 19.30.100 to provide access to state lands that [WHICH] are programmed for surface or non-commercial forest products disposal, and to provide access roads at the lowest possible cost.

* Sec. 2. AS 19.30.070 is amended to read:

Sec. 19.30.070. PLANNING AND [CONTRACTS FOR] CONSTRUCTION OF ROADS. The commissioner of natural resources [DIRECTOR OF THE DIVISION OF LANDS] may plan and construct roads or contract with private persons for the construction of roads to and on state land [LANDS] programmed for surface or non-commercial forest products disposal [WHICH ARE NOT MORE THAN SIX MILES FROM EXISTING ROADS OR HIGHWAYS].

* Sec. 3. AS 19.30.080 is amended to read:

Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An access road constructed under AS 19.30.060 - 19.30.100 shall be of low standard, not necessarily suitable for all weather use. The state is not under obligation to maintain an access road constructed under AS 19.30.060 - 19.30.100. If an access road is constructed outside a municipality that has zoning ordinances, the right-of-way width for

the road shall be determined by the Department of Natural Resources [DIVISION OF LANDS] and the Department of Transportation and Public Facilities. If an access road is constructed within the boundaries of a municipality that has zoning ordinances, the right-of-way width shall conform to the subdivision control ordinances of the municipality. Contracts for the work on an access road shall be awarded to the lowest responsible bidder qualified to contract with the state.

* Sec. 4. AS 19.30.090 is amended to read:

Sec. 19.30.090. PAYMENT OF CONSTRUCTION COSTS [IN LAND CREDIT CERTIFICATES]. The cost of constructing access roads to state land [LANDS] shall be paid in appropriated funds or freely transferable land credit certificates which may be applied toward the purchase or lease of any state land [LANDS] under the jurisdiction of the Department of Natural Resources [DIVISION OF LANDS], except tide, submerged, and shoreland and land [SHORELANDS AND LANDS] belonging to the state which have been obtained by escheat, purchase, or any means other than by general land grant. A land credit certificate is valid for a period of 20 years after issue. After the expiration of 20 years from date of issue the holder may not start an action against the state or any person based upon the certificate. The method of disposing of land [LANDS] and resources and restrictions upon their disposal established by law or regulation are in no way affected by the use of land credit certificates.

* Sec. 5. AS 29.18.202 is amended to read:

Sec. 29.18.202. DETERMINATION OF ENTITLEMENT FOR CITIES. The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of former AS 29.18.190 and 29.18.200 [, AS REPEALED BY THIS ACT,] is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the

boundaries of each city at any time between the initial date of eligibility under former AS 29.18.190 and 29.18.200 and July 1, 1978. Within six months of July 1, 1978, the commissioner [DIRECTOR] shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city.

* Sec. 6. AS 29.18.203(b) is amended to read:

(b) Within six months of the date of incorporation of a municipality which is incorporated after July 1, 1978, the commissioner [DIRECTOR] shall determine the entitlement of each municipality eligible to receive general grant land under (a) of this section and certify the entitlement to the municipality.

* Sec. 7. AS 29.18.204(c) is amended to read:

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.18.201 and 29.18.202 at any time before October 1, 1980 However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the commissioner [DIRECTOR], the municipality may, not later than 90 days after receipt of the commissioner's [DIRECTOR'S] rejection, select additional state land as necessary to satisfy its entitlement.

* Sec. 8. AS 29.18.204(d) is amended to read:

(d) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.18.203 at any time within one year after the commissioner [DIRECTOR] certifies the entitlement to the municipality.

* Sec. 9. AS 29.18.205(b) is amended to read:

(b) All approved selections under former AS 29.18.190 and 29.18.200 for which patent has not been issued to a municipality on

July 1, 1978 shall be reviewed by the commissioner [DIRECTOR] within nine months of July 1, 1978. Any approved selection of land which was vacant, unappropriated or unreserved on the date of selection is valid as of the date of the approval under former AS 29.18.190 and 29.18.200, and a patent shall be issued to the municipality within three months after approval by the commissioner [DIRECTOR] of a plat of survey. The acreage shall be credited toward fulfillment of the municipality's entitlement. No municipality is entitled to receive patent under AS 29.18.011 - 29.18.610 to more than its entitlement determined under AS 29.18.201 - 29.18.203. Any prior approval by the commissioner [DIRECTOR] of municipal selections for land which was not vacant, unappropriated or unreserved on the date of selection shall be rescinded, and patent may not be issued except when disposal to a third party by sale or lease has occurred. Transfers of land to municipalities under AS 29.18.011 - 29.18.610 are subject to AS 38.-05.321. Classification actions as reflected upon the land status records of the Department of Natural Resources are determinative of land classification status for purposes of AS 29.18.011 - 29.18.610.

* Sec. 10. AS 29.18.205(f) is amended to read:

(f) The commissioner [DIRECTOR] shall approve each selection for patent within nine months of its selection by a municipality, and a patent shall be issued to the municipality for land selected in satisfaction of a general grant land entitlement vested under AS 29.18.-201 - 29.18.203 within three months after approval by the commissioner [DIRECTOR] of a plat of survey.

* Sec. 11. AS 29.18.206(d) is amended to read:

(d) Within six months after approval of a municipal selection of school, university, or mental health land, the commissioner [DIRECTOR] shall identify state general grant land of approximately equal value

to the land requested by the municipality, and shall propose the replacement land for the concurrence of the appropriate board. If a proposal by the commissioner [DIRECTOR] is rejected by the board, the commissioner [DIRECTOR] shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence, and shall propose the replacement land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired by the Territory and State of Alaska.

* Sec. 12. AS 29.18.206(e) is amended to read:

(e) The notice and review provisions of AS [38.05.305 AND] 38.05.345 are applicable to the designation of other general grant land as school, university or mental health land in replacement of land selected under this section. The provisions of AS 38.50 [AND 38.05.032] do not apply to such designations under this section. [THE PROVISIONS OF AS 38.05.030(a), 38.05.030(e), AND 38.05.035(a)(13) WHICH REQUIRE THE APPROVAL OF THE RESPECTIVE TRUST BOARD BEFORE DISPOSAL OF LANDS BY THE DIRECTOR DO NOT APPLY TO SELECTIONS OF SCHOOL, UNIVERSITY OR MENTAL HEALTH LAND BY A MUNICIPALITY UNDER THIS SECTION.]

* Sec. 13. AS 29.18.207(c) is amended to read:

(c) If land selected by a municipality is unsurveyed at the time of approval, the commissioner [DIRECTOR] shall survey, or may approve the municipality's survey of, the exterior boundaries of an approved selection without interior subdivision, and shall issue patent in terms of the exterior boundary survey. The cost of the survey shall be borne by the municipality. If land selected by a municipality has been surveyed at the time of its selection, the boundaries shall

conform to the public land subdivisions established by the approved survey.

* Sec. 14. AS 29.18.207(d) is amended to read:

(d) The commissioner [DIRECTOR] may approve municipal selections of land which have been tentatively approved or patented to the state by the federal government, but the commissioner [HE] may not issue patent to a municipality until the land has first been patented to the state. After approval of a selection by the commissioner [DIRECTOR], but before patent to a municipality, the municipality may execute conditional leases and make conditional sales only with the consent of the commissioner [DIRECTOR]. Conditional sales and conditional leases made before July 1, 1978 do not require the consent of the commissioner [DIRECTOR].

* Sec. 15. AS 29.18.209 is amended to read:

Sec. 29.18.209. AUTHORIZATION FOR LAND EXCHANGES. The [DIRECTOR, WITH THE CONCURRENCE OF THE] commissioner [,] and any municipality are authorized to exchange land or interests in land when it is in the public interest. Land or interests in land exchanged under this section must be of approximately equal value, including the nonmonetary value of public benefits. Exchange procedures shall comply with applicable law and municipal ordinances. The notice and review provisions of AS [38.05.305 AND] 38.05.345 are applicable to exchanges of land under this section. The provisions of AS 38.50.010 - 38.50.-170 do not apply to exchanges of land under this section.

* Sec. 16. AS 29.18.210(b) is amended to read:

(b) Where state land is the most logical location for demonstrated municipal expansion for nonpublic settlement and development purposes, and when an exchange of land under AS 29.18.209 is not possible or is not in the public interest, it is the policy of the

state to sell or lease the land at public auction. The state may contract with a municipality to act as its agent in an auction of state land under applicable statutes. When a municipality acts as the agent of the state in an auction, the municipality may retain from the proceeds of the auction the expenses that [WHICH] the commissioner [DIRECTOR] determines to be necessary and reasonable.

* Sec. 17. AS 29.18.210(c) is amended to read:

(c) Nothing in AS 29.18.011 - 29.18.610 limits or impairs the authority of the commissioner [DIRECTOR] to transfer land to municipalities, without limit or consideration, for public purposes in accordance with AS 38.05.315. If there is a remaining entitlement of the municipality, land transferred under AS 38.05.315 shall be credited toward fulfillment of the entitlement.

* Sec. 18. AS 29.18.211(a) is amended to read:

(a) A municipality which on July 1, 1978 is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former AS 29.18.190 and 29.18.200 shall elect either to obtain the benefits provided in AS 29.18.201 - 29.18.213 or to pursue the litigation and thereby waive any claim to entitlement under AS 29.18.201 - 29.18.213. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in AS 29.18.201, the municipality shall file its motion for dismissal within 60 days of July 1, 1978. If the claim involves a city eligible to receive an entitlement under AS 29.18.202, the city shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the commissioner [DIRECTOR] under AS 29.18.-202. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered