

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
6484 SENATE RESOURCES

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The production royalty under AS 38.05.212 is set at 3% of net income as defined under the Mining License Tax (AS 43.65).

Section 5: This amends the definition of annual labor so that it applies to leasehold locations and mining leases, in order to be consistent with section 2.

Section 6: This amends the existing offshore mining statute to delete the rental requirement in AS 38.05.250(c). It is now included under the new statutes in section 4.

Section 7: This change amends the "abandonment" language to make it clear that failure to pay the rent or royalty is considered abandonment of the claim. New language is added to provide for timely but deficient payments.

Section 8: A new section on reclamation is added in AS 27.05, although it is not effective until June 1, 1990. This section requires DNR to adopt reclamation regulations for miners on state land. The regulations must require the submission of a reclamation plan and include penalties of non-compliance. Upon failure to comply with the reclamation, the miner must submit a bond to the state.

Section 9: This amends the Mining License Tax statute to allow the commissioner of the Department of revenue to provide the Department of Natural Resources specific information from the Mining License Tax for royalty audit purposes. DNR must maintain confidentiality of this information.

Section 10: Two sections are repealed. AS 38.05.205(b) requirement for annual labor on mining leases is now included under AS 38.05.210(a). Deletion of AS 38.05.210(d) were made because this section repeats other sections and is unnecessary.

Section 11: This transition section states that this act applies to all state claims, leasehold locations and mining leases in existence on, before or after August 31, 1989. The first rental year begins on September 1, 1989 and the first royalty payments are for production after December 31, 1989. Section d allows the Department to adopt regulations to implement this act and may allow for the first year's rental payment due date to be deferred.

Section 12: This section requires reclamation regulations added by Section 8 to be adopted no later than July 1, 1991.

Section 13: This allows the Department to begin adopting regulations for the rent and royalty provisions immediately after this act becomes law.

Section 14: This section clarifies that the rent and royalty requirements do not become effective until August 31, 1989.

Section 15: This section delays the effective date of the reclamation sections (Sections 8 and 12) until June 1, 1990.

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 129 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mining; and providing for an
7 effective date."

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

9 * Section 1. AS 38.05.036(a) is amended to read:

10 (a) The Department of Revenue shall audit reports, payments, and
11 payments due relating to

12 (1) the royalty and net profits under oil and gas con-
13 tracts, agreements, or leases under AS 38.05.180; [THIS CHAPTER]

14 (2) the royalty on net income from mining claims, leasehold
15 locations, or mining leases under AS 38.05.212.

16 * Sec. 2. AS 38.05.036(c) is amended to read:

17 (c) All information obtained by the Department of Revenue relat-
18 ing to royalty and net profits payments under AS 38.05.180 or royalty
19 on net income under AS 38.05.212, including information obtained under
20 AS 43, may be made available to the department, in the form of sum-
21 maries and, when in furtherance of the department's royalty and net
22 profits functions, relevant portions of the audits. Information made
23 available to the department that was obtained under AS 43 is confiden-
24 tial and subject to the provisions of AS 43.05.230.

25 * Sec. 3. AS 38.05.036(e) is amended to read:

26 (e) In this section, "audit" means the process of obtaining
27 sufficient competent evidentiary matter through inspection, observa-
28 tion, inquiry, and confirmation to afford a reasonable basis for
29 ascertaining the compliance by the subject of the audit with the

1 applicable law, regulation, lease, agreement, and contract terms; it
2 does not include any other actions necessary to administer this chap-
3 ter pertaining either to oil and gas royalty and net profits payments
4 under AS 38.05.180 or to mining royalty payments on net income under
5 AS 38.05.212, including daily accounting functions, certification
6 procedures associated with those accounting functions, and enforcement
7 of payments of royalties and net profits.

8 * Sec. 4. AS 38.05.205(c) is amended to read:

9 (c) A mining lease shall be for any period up to 55 years, and
10 is renewable if requirements for a lease remain satisfied. Annual
11 rental and production royalties shall be paid as required under
12 AS 38.05.211 and 38.05.212 [THE LESSEE HAS A RIGHT TO A NEW LEASE AT
13 THE END OF EACH LEASE PERIOD. THE COMMISSIONER MAY MAKE REASONABLE
14 ADJUSTMENTS OF THE RENTAL RATE AT THE END OF EACH 20 YEAR PERIOD,
15 BASED UPON CHANGED CONDITIONS IN PRODUCTION COSTS AND MARKETS]. A
16 valid mining claim located and held under AS 38.05.195 may be con-
17 verted to a lease at any time upon application by the owner, and
18 issuance by the commissioner. Rights [NO RIGHTS] granted by a mining
19 lease may not be exercised until the lease has been filed for record
20 in the recording district where the land is located.

21 * Sec. 5. AS 38.05.210(a) is amended to read:

22 (a) Labor shall be performed or improvements made annually on or
23 for the benefit or development of each mining claim, leasehold lo-
24 cation, and mining lease on state land except that where adjacent
25 claims, leasehold locations, or mining leases are held in common, the
26 expenditure may be made on any one claim, leasehold location, or
27 mining lease. The commissioner shall establish the date of the com-
28 mencement of the year during which the labor or improvements are to be
29 performed. Labor shall be performed at the annual rate of \$100 [\$200]

1 per claim or leasehold location, and \$100 for each partial or whole 40
2 acres of each mining lease. If more work is performed than is re-
3 quired by this section to be performed in any one year, the excess
4 [WORK UP TO A] value [OF \$800] may be applied against labor required
5 to be done during the subsequent year or years, for as many as four
6 years. Instead of performing annual labor, the holder of a claim,
7 leasehold location, or mining lease may make a cash payment to the
8 state equal to the value of the labor required by this subsection.

9 * Sec. 6. AS 38.05.210(b) is amended to read:

10 (b) During the year in which [THE PERFORMANCE OF] annual labor
11 is required or within 90 days after the close of that year, the owner
12 of the mining claim, leasehold location, or mining lease, or some
13 other person having knowledge of the facts shall record with the
14 recorder of the district in which the claim, leasehold location, or
15 mining lease is located a signed statement setting out the informa-
16 tion, as may be required by the commissioner, concerning the annual
17 labor of the preceding year, [AND] any labor in excess of that re-
18 quired for the preceding year, and any payment of cash instead of
19 annual labor. The statement, properly recorded, is prima facie evi-
20 dence of the performance of the labor. The failure of one of several
21 co-owners to contribute the proportion of the expenditures required
22 for annual labor from the co-owner shall be treated in accordance with
23 AS 38.05.215 - 38.05.235.

24 * Sec. 7. AS 38.05 is amended by adding new sections to read:

25 Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining
26 claim, leasehold location, or mining lease including a mining lease
27 under AS 38.05.250(b), shall pay, in advance, annual rental for the
28 right to continue to hold the mining claim, leasehold location, or
29 mining lease. The annual rental amount shall be based on the number

of the years since a mining claim, a leasehold location, or a mining lease's predecessor claim or leasehold location was first located, as follows:

Number of Years Since First Located	Rental Amount Per Acre for Mining Leases	Rental Amount for Each Mining Claim or Leasehold Location
0 - 10	\$.50	\$ 20
11 - or more	\$2.50	\$ 100

(b) A claim, leasehold location, or mining lease located on or before August 31, 1989 is considered to have been first located on August 31, 1989 for purposes of determining the amount of rental under this section.

(c) The rental for each year shall be credited against the production royalty under AS 38.05.212 as it accrues for that year.

(d) The rental established under this section shall be revised each 10 years by the commissioner based on the consumer price index for Anchorage and published in regulations by the commissioner.

(e) This section does not apply to prospecting permits issued under AS 38.05.250(a).

Sec. 38.05.212. PRODUCTION ROYALTY. (a) In exchange for and to preserve the right to extract and possess the minerals produced, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under AS 38.05.250, shall pay a royalty on all minerals produced from land subject to the claim, leasehold location, or mining lease during each calendar year.

(b) The production royalty is two percent of net income as determined under AS 43.65.

(c) The commissioner shall adopt regulations to implement this

1 section and to provide for combined reporting and paying of production
2 royalties fo. mining operations that include more than one mining
3 claim, leasehold location, or mining lease including a mining lease
4 under AS 38.05.250.

5 * Sec. 8. AS 38.05.240 is amended to read:

6 Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In
7 AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical,
8 geophysical, and airborne surveys conducted by qualified experts and
9 verified by a detailed report filed in the recording district office
10 in which the claim, leasehold location, or mining lease is located
11 which sets out fully (1) the location of the work performed in re-
12 lation to the point of discovery and boundaries of the claim, lease-
13 hold location, or mining lease, (2) the nature, extent, and cost of
14 it, and (3) the name, address, and professional background of the
15 person conducting the work. The commissioner, by regulation, shall
16 define the nature of acceptable survey work and the qualifications of
17 a person competent to perform this work. The airborne surveys, how-
18 ever, may not be applied as labor for more than two consecutive years
19 or for more than a total of five years on any one mining claim, lease-
20 hold location, or mining lease, and each of those surveys shall be
21 nonrepetitive of any previous survey on the same claim, leasehold
22 location, or mining lease.

23 * Sec. 9. AS 38.05.265 is amended to read:

24 Sec. 38.05.265. ABANDONMENT. Failure to [(1)] properly record a
25 certificate of location or a statement of annual labor, [OR (2)] file
26 with the director within the time prescribed a lease application, [OR
27 (3)] pay annual rental, pay production royalty [OR RECEIVE CREDIT FOR
28 RENTAL], or [(4)] keep location boundaries clearly marked [, ALL] as
29 required by AS 38.05.185 - 38.05.275 and by regulations adopted under

1 these sections [,] constitutes abandonment of all rights acquired
2 under the mining claim [LEASE], leasehold location, lease, including a
3 lease under AS 38.05.250 or site involved, and the claim, location,
4 lease, or site [IT] is subject to relocation by others. A [IF A
5 LOCATION IS NOT RELOCATED BY ANOTHER PERSON WITHIN ONE YEAR AFTER THE
6 FAILURE, THE] locator or claimant of an [THE] abandoned location [,]
7 or a successor in interest [,] may not [RETURN TO] relocate the lo-
8 cation until one year after abandonment [IT AS THOUGH IT HAD NEVER
9 BEEN LOCATED]. A statement of annual labor that [WHICH] does not
10 accurately set out the essential facts is void and of no effect. If
11 an annual rental or a royalty payment is deficient but is otherwise
12 timely paid, abandonment does not result if full payment is made
13 within

14 (1) the period prescribed by a deficiency notice from the
15 commissioner; or

16 (2) 30 days after a final judgment establishing the amount
17 due if the deficiency amount due was contested.

18 * Sec. 10. AS 43.05.230 is amended by adding a new subsection to read:

19 (h) The commissioner shall, upon request, furnish to the Depart-
20 ment of Natural Resources copies of tax returns, reports, documents
21 filed under AS 43.65.010 - 43.65.060, and the department's deter-
22 minations and workpapers. The Department of Natural Resources shall
23 maintain the confidentiality that the department is required to extend
24 to the returns, reports, documents, determinations, and workpapers
25 furnished to the Department of Natural Resources under this sub-
26 section.

27 * Sec. 11. AS 38.05.205(b), 38.05.210(d), and 38.05.250(c) are re-
28 pealed.

29 * Sec. 12. TRANSITION. (a) This Act applies to mining claims,

1 leasehold locations, and mining leases located before, on, or after the
2 effective date of this Act.

3 (b) The first annual rental payment due under AS 38.05.211 as enacted
4 in sec. 7 of this Act is for the annual labor year beginning September 1,
5 1989.

6 (c) The first production royalty payment due under AS 38.05.212 as
7 enacted by sec. 7 of this Act is for production after December 31, 1989.

8 (d) The commissioner of natural resources shall adopt regulations to
9 implement the changes made by this Act. The regulations take effect under
10 the Administrative Procedure Act (AS 44.62) but not before August 31, 1989.
11 The regulations may defer the date for the first annual rental payment due
12 under AS 38.05.211 as enacted in sec. 7 of this Act.

13 * Sec. 13. Section 12(d) of this Act takes effect immediately under
14 AS 01.10.070(c).

15 * Sec. 14. Except for sec. 12(d), this Act takes effect August 31,
16 1989.

Original sponsor: Rules/Governor

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14 (2) the royalty on net income from mining claims, leasehold
15 locations, or mining leases under AS 38.05.212 [THIS CHAPTER].

16 * Sec. 2. AS 38.05.036(c) is amended to read:

17 (c) All information obtained by the Department of Revenue relat-
18 ing to royalty and net profits payments under AS 38.05.180 or royalty
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20 AS 43, may be made available to the department, in the form of sum-
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27 sufficient competent evidentiary matter through inspection, observa-
28 tion, inquiry, and confirmation to afford a reasonable basis for
29 ascertaining the compliance by the subject of the audit with the

1 applicable law, regulation, lease, agreement, and contract terms; it
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26 expenditure may be made on any one claim, leasehold location, or
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25 Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining
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29 mining lease. The annual rental amount shall be based on the number

1 of the years since a mining claim, a leasehold location, or a mining
2 lease's predecessor claim or leasehold location was first located, as
3 follows:

4 Number of Years Since	5 Rental Amount Per	6 Rental Amount
7 First Located	8 Acre for Mining	9 for Each Mining
	10 Leases	11 Claim or Leasehold
		12 Location
13 0 - 5	14 \$.50	15 \$ 20
16 6 - 10	17 \$1.00	18 40
19 11 - or more	20 \$2.50	21 100

22 (b) A claim, leasehold location, or mining lease located on or
23 before August 31, 1989 is considered to have been first located on
24 August 31, 1989 for purposes of determining the amount of rental under
25 this section.

26 (c) The rental for each year shall be credited against the
27 production royalty under AS 38.05.212 as it accrues for that year.

28 (d) The rental established under this section shall be revised
29 each 10 years by the commissioner based on the consumer price index
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(e) This section does not apply to prospecting permits issued
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33 ing a mining lease under AS 38.05.250, shall pay a royalty on all
34 minerals produced from land subject to the claim, leasehold location,
35 or mining lease during each calendar year.

36 (b) The production royalty is two and one-half percent of net
37 income as determined under AS 43.65.

1 (c) The commissioner shall adopt regulations to implement this
2 section and to provide for combined reporting and paying of production
3 royalties for mining operations that include more than one mining
4 claim, leasehold location, or mining lease including a mining lease
5 under AS 38.05.250.

6 * Sec. 8. AS 38.05.240 is amended to read:

7 Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In
8 AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical,
9 geophysical, and airborne surveys conducted by qualified experts and
10 verified by a detailed report filed in the recording district office
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15 it, and (3) the name, address, and professional background of the
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17 define the nature of acceptable survey work and the qualifications of
18 a person competent to perform this work. The airborne surveys, how-
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20 or for more than a total of five years on any one mining claim, lease-
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1 required by AS 38.05.185 - 38.05.275 and by regulations adopted under
2 these sections [,] constitutes abandonment of all rights acquired
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4 lease under AS 38.05.250 or site involved, and the claim, location,
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b(a)(b)

go0759sE
Bradley
3/29/89

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22 quired for the preceding year, and any payment of cash instead of
23 annual labor. The statement, properly recorded, is prima facie evi-
24 dence of the performance of the labor. The failure of one of several
25 co-owners to contribute the proportion of the expenditures required
26 for annual labor from the co-owner shall be treated in accordance with
27 AS 38.05.215 - 38.05.235.

28 * Sec. 7. AS 38.05 is amended by adding new sections to read:

29 Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining

1 claim, leasehold location, or mining lease on land selected by the
 2 state under Secs. 6(a) - (b) of the Alaska Statehood Act (P.L. 85-508,
 3 72 Stat. 339) shall pay, in advance, annual rental for the right to
 4 continue to hold the mining claim, leasehold location, or mining
 5 lease. The annual rental amount shall be based on the number of the
 6 years since a mining claim, a leasehold location, or a mining lease's
 7 predecessor claim or leasehold location was first located, as follows:

Number of Years Since First Located	Rental Amount Per Acre for Mining Leases	Rental Amount for Each Mining Claim or Leasehold Location
0 - 5	\$.50	\$ 20
6 - 10	\$1.00	40
11 - or more	\$2.50	100

15 (b) A claim, leasehold location, or mining lease located on or
 16 before August 31, 1989 is considered to have been first located on
 17 August 31, 1989 for purposes of determining the amount of rental under
 18 this section.

19 (c) The rental for each year shall be credited against the
 20 production royalty under AS 38.05.212 as it accrues for that year.

21 (d) The rental established under this section shall be revised
 22 each 10 years by the commissioner based on the consumer price index
 23 for Anchorage and published in regulations by the commissioner.

24 Sec. 38.05.212. PRODUCTION ROYALTY. (a) In exchange for and to
 25 preserve the right to extract and possess the minerals produced, the
 26 holder of a mining claim, leasehold location, or mining lease on land
 27 selected by the state under Secs. 6(a) - (b) of the Alaska Statehood
 28 Act (P.L. 85-508, 72 Stat. 339) shall pay a royalty on all minerals
 29 produced from land subject to the claim, leasehold location, or mining

1 lease during each calendar year.

2 (b) The production royalty is two percent of net income as
3 determined under AS 43.65.

4 (c) The commissioner shall adopt regulations to implement this
5 section and to provide for combined reporting and paying of production
6 royalties for mining operations that include more than one mining
7 claim, leasehold location, or mining lease.

8 * Sec. 8. AS 38.05.240 is amended to read:

9 Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In
10 AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical,
11 geophysical, and airborne surveys conducted by qualified experts and
12 verified by a detailed report filed in the recording district office
13 in which the claim, leasehold location, or mining lease is located
14 which sets out fully (1) the location of the work performed in re-
15 lation to the point of discovery and boundaries of the claim, lease-
16 hold location, or mining lease, (2) the nature, extent, and cost of
17 it, and (3) the name, address, and professional background of the
18 person conducting the work. The commissioner, by regulation, shall
19 define the nature of acceptable survey work and the qualifications of
20 a person competent to perform this work. The airborne surveys, how-
21 ever, may not be applied as labor for more than two consecutive years
22 or for more than a total of five years on any one mining claim, lease-
23 hold location, or mining lease, and each of those surveys shall be
24 nonrepetitive of any previous survey on the same claim, leasehold
25 location, or mining lease.

26 * Sec. 9. AS 38.05.265 is amended to read:

27 Sec. 38.05.265. ABANDONMENT. Failure to [(1)] properly record a
28 certificate of location or a statement of annual labor, [OR (2)] file
29 with the director within the time prescribed a lease application, [OR

1 (3)] pay any required annual rental, pay any required production
2 royalty [OR RECEIVE CREDIT FOR RENTAL], or [(4)] keep location bound-
3 aries clearly marked [, ALL] as required by AS 38.05.185 - 38.05.275
4 and by regulations adopted under these sections [,] constitutes aban-
5 donment of all rights acquired under the mining claim [LEASE], lease-
6 hold location, lease, or site involved, and the claim, location,
7 lease, or site [IT] is subject to relocation by others. A [IF A
8 LOCATION IS NOT RELOCATED BY ANOTHER PERSON WITHIN ONE YEAR AFTER THE
9 FAILURE, THE] locator or claimant of an [THE] abandoned location [,]
10 or a successor in interest [,] may not [RETURN TO] relocate the lo-
11 cation until one year after abandonment [IT AS THOUGH IT HAD NEVER
12 BEEN LOCATED]. A statement of annual labor that [WHICH] does not
13 accurately set out the essential facts is void and of no effect. If
14 an annual rental or a royalty payment is deficient but is otherwise
15 timely paid, abandonment does not result if full payment is made
16 within

17 (1) the period prescribed by a deficiency notice from the
18 commissioner; or

19 (2) 30 days after a final judgment establishing the amount
20 due if the deficiency amount due was contested.

21 * Sec. 10. AS 43.05.230 is amended by adding a new subsection to read:

22 (h) The commissioner shall, upon request, furnish to the Depart-
23 ment of Natural Resources copies of tax returns, reports, documents
24 filed under AS 43.65.010 - 43.65.060, and the department's deter-
25 minations and workpapers. The Department of Natural Resources shall
26 maintain the confidentiality that the department is required to extend
27 to the returns, reports, documents, determinations, and workpapers
28 furnished to the Department of Natural Resources under this subsec-
29 tion.

1 * Sec. 11. AS 38.05.205(b) and 38.05.210(d) are repealed.

2 * Sec. 12. TRANSITION. (a) This Act applies to mining claims, lease-
3 hold locations, and mining leases located before, on, or after the effec-
4 tive date of this Act on land selected by the state under Secs. 6(a) - (b)
5 of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339).

6 (b) The first annual rental payment due under AS 38.05.211 as enacted
7 in sec. 7 of this Act is for the annual labor year beginning September 1,
8 1989.

9 (c) The first production royalty payment due under AS 38.05.212 as
10 enacted by sec. 7 of this Act is for production after December 31, 1989.

11 (d) The commissioner of natural resources shall adopt regulations to
12 implement the changes made by this Act. The regulations take effect under
13 the Administrative Procedure Act (AS 44.62) but not before August 31, 1989.
14 The regulations may defer the date for the first annual rental payment due
15 under AS 38.05.211 as enacted in sec. 7 of this Act.

16 * Sec. 13. Section 12(d) of this Act takes effect immediately under
17 AS 01.10.070(c).

18 * Sec. 14. Except for sec. 12(d), this Act takes effect August 31,
19 1989.

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 129 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to rent and royalty payments for a
7 mining claim, leasehold location, or mining lease, to
8 mineral-in-character determinations, to annual labor
9 requirements for and to abandonment of a mining
10 claim, leasehold location, or mining lease and to
11 mining license tax information; and providing for an
12 effective date."

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

14 * Section 1. AS 38.05.036(a) is amended to read:

15 (a) The Department of Revenue shall audit reports, payments, and
16 payments due relating to

17 (1) the royalty and net profits under oil and gas con-
18 tracts, agreements, or leases under AS 38.05.180;

19 (2) the royalty on net income from mining claims, leasehold
20 locations, or mining leases under AS 38.05.212 [THIS CHAPTER].

21 * Sec. 2. AS 38.05.036(c) is amended to read:

22 (c) All information obtained by the Department of Revenue relat-
23 ing to royalty and net profits payments under AS 38.05.180 or royalty
24 on net income under AS 38.05.212, including information obtained under
25 AS 43, may be made available to the department, in the form of sum-
26 maries and, when in furtherance of the department's royalty and net
27 profits functions, relevant portions of the audits. Information made
28 available to the department that was obtained under AS 43 is confiden-
29 tial and subject to the provisions of AS 43.05.230.

1 * Sec. 3. AS 38.05.036(e) is amended to read:

2 (e) In this section, "audit" means the process of obtaining
3 sufficient competent evidentiary matter through inspection, observa-
4 tion, inquiry, and confirmation to afford a reasonable basis for
5 ascertaining the compliance by the subject of the audit with the
6 applicable law, regulation, lease, agreement, and contract terms; it
7 does not include any other actions necessary to administer this chap-
8 ter pertaining either to oil and gas royalty and net profits payments
9 under AS 38.05.180 or to mining royalty payments on net income under
10 AS 38.05.212, including daily accounting functions, certification
11 procedures associated with those accounting functions, and enforcement
12 of payments of royalties and net profits.

13 * Sec. 4. AS 38.05.205(b) is amended to read:

14 (b) Beginning on the date established by the commissioner under
15 AS 38.05.210, [THERE SHALL ACCRUE] an annual rental accrues for each
16 leasehold location or portion of a leasehold location, [THEREOF]
17 whether or not under lease, in the amounts established in AS 38.05.211
18 [NOT LESS THAN THE VALUE OF ANNUAL LABOR IMPROVEMENTS REQUIRED FOR
19 MINING CLAIMS. THE VALUE OF WORK DONE ON, OR FOR THE BENEFIT OF, THE
20 LEASEHOLD IN COMPLIANCE WITH AS 38.05.210 MAY BE CREDITED AGAINST THE
21 RENTAL].

22 * Sec. 5. AS 38.05.205(c) is amended to read:

23 (c) A mining lease shall be for any period up to 55 years, and
24 is renewable if requirements for the lease remain satisfied. Annual
25 rental and production royalties shall be paid as required under
26 AS 38.05.211 and 38.05.212 [THE LESSEE HAS A RIGHT TO A NEW LEASE AT
27 THE END OF EACH LEASE PERIOD. THE COMMISSIONER MAY MAKE REASONABLE
28 ADJUSTMENTS OF THE RENTAL RATE AT THE END OF EACH 20 YEAR PERIOD,
29 BASED UPON CHANGED CONDITIONS IN PRODUCTION COSTS AND MARKETS]. A

1 valid mining claim located and held under AS 38.05.195 may be con-
2 verted to a lease at any time upon application by the owner, and
3 issuance by the commissioner. Rights [NO RIGHTS] granted by a mining
4 lease may not be exercised until the lease has been filed for record
5 in the recording district where the land is located.

6 * Sec. 6. AS 38.05 is amended by adding a new section to read:

7 Sec. 38.05.206. MINERAL CHARACTER DETERMINATIONS. (a) Within
8 three years after the receipt by the commissioner of a request for a
9 mineral character determination from the holder of the mining claim,
10 the commissioner shall determine under AS 38.05.243 whether the land
11 underlying a mining claim was mineral in character at the time of
12 state selection.

13 (b) A holder of a mining claim who fails to make a request for a
14 mineral character determination to the commissioner by September 1,
15 1990, or within one year from the location of the mining claim, which-
16 ever is later, shall make rental payments under AS 38.05.211 and
17 royalty payments under AS 38.05.212 until the commissioner makes a
18 mineral character determination concerning the land under AS 38.05.-
19 243. A holder of a mining claim who makes a request for a mineral
20 character determination to the commissioner by September 1, 1990, or
21 within one year after the location of the mining claim, whichever is
22 later, does not owe rental payments under AS 38.05.211 or royalty
23 payments under AS 38.05.212 until the commissioner makes the mineral
24 character determination under AS 38.05.243.

25 (c) On the determination by the commissioner that the land
26 underlying the mining claim was mineral in character at the time of
27 state selection, the holder of the mining claim is liable for rental
28 and royalty payments from the date of location or August 31, 1989,
29 whichever comes later.

1 (d) On the determination by the commissioner that the land
2 underlying the mining claim was not mineral in character at the time
3 of state selection and that the holder of the mining claim has made
4 rental payments under AS 38.05.211 or royalty payments under AS 38.-
5 05.212 on the claim, the commissioner shall refund to the holder of
6 the mining claim all rental and royalty payments paid on the mining
7 claim

8 (e) If the commissioner fails to make a mineral character deter-
9 mination within three years from the date of a request for a deter-
10 mination, the amount of the rental and royalty due under AS 38.05.211
11 and 38.05.212 is reduced by 50 percent from the time that the deter-
12 mination was requested through the date that the determination is
13 made. The holder of a mining claim may request that any excess pay-
14 ment accumulated under this subsection be

15 (1) applied to rental and royalty payments due in subse-
16 quent years; or

17 (2) refunded.

18 * Sec. 7. AS 38.05.210(a) is amended to read:

19 (a) Labor shall be performed or improvements made annually on or
20 for the benefit or development of each mining claim, leasehold lo-
21 cation, and mining lease on state land except that where adjacent
22 claims, leasehold locations, or mining leases are held in common, the
23 expenditure may be made on any one claim, leasehold location, or
24 mining lease. The commissioner shall establish the date of the com-
25 mencement of the year during which the labor or improvements are to be
26 performed. Labor shall be performed at the annual rate of \$100 [\$200]
27 per claim or leasehold location, and \$100 for each partial or whole 40
28 acres of each mining lease. If more work is performed than is re-
29 quired by this section to be performed in any one year, the excess

1 [WORK UP TO A] value [OF \$800] may be applied against labor required
2 to be done during the subsequent year or years, for as many as four
3 years. Instead of performing annual labor, the holder of a claim,
4 leasehold location, or mining lease may make a cash payment to the
5 state equal to the value of the labor required by this subsection.

6 * Sec. 8. AS 38.05.210(b) is amended to read:

7 (b) During the year in which [THE PERFORMANCE OF] annual labor
8 is required or within 90 days after the close of that year, the owner
9 of the mining claim, leasehold location, or mining lease, or some
10 other person having knowledge of the facts shall record with the
11 recorder of the district in which the claim, leasehold location, or
12 mining lease is located a signed statement setting out the informa-
13 tion, as may be required by the commissioner, concerning the annual
14 labor of the preceding year, [AND] any labor in excess of that re-
15 quired for the preceding year, and any payment of cash instead of
16 annual labor. The statement, properly recorded, is prima facie evi-
17 dence of the performance of the labor. The failure of one of several
18 co-owners to contribute the proportion of the expenditures required
19 for annual labor from the co-owner shall be treated in accordance with
20 AS 38.05.215 - 38.05.235.

21 * Sec. 9. AS 38.05 is amended by adding new sections to read:

22 Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining
23 claim, leasehold location, or mining lease on land that has been
24 selected by the state under Secs. 6(a) - (b) of the Alaska Statehood
25 Act (P.L. 85-508, 72 Stat. 339) and that has been determined to be
26 mineral in character under AS 38.05.206 shall pay, in advance, annual
27 rental for the right to continue to hold the mining claim, leasehold
28 location, or mining lease. The annual rental amount shall be based on
29 the number of the years since a mining claim, a leasehold location, or

1 a mining lease's predecessor claim or leasehold location was first
2 located, as follows:

3 Number of Years Since	Rental Amount Per	Rental Amount
4 First Located	Acre for Mining	for Each Mining
5	Leases	Claim or Leasehold
6		Location
7 0 - 5	\$.50	\$ 20
8 6 - 10	\$1.00	40
9 11 - or more	\$2.50	100

10 (b) A claim, leasehold location, or mining lease located on or
11 before August 31, 1989 is considered to have been first located on
12 August 31, 1989 for purposes of determining the amount of rental under
13 this section.

14 (c) The rental for each year shall be credited against the
15 production royalty under AS 38.05.212 as it accrues for that year.

16 (d) The rental established under this section shall be revised
17 each 10 years by the commissioner based on the consumer price index
18 for Anchorage and published in regulations by the commissioner.

19 Sec. 38.05.212. PRODUCTION ROYALTY. (a) In exchange for and to
20 preserve the right to extract and possess the minerals produced, the
21 holder of a mining claim, leasehold location, or mining lease ~~on land~~
22 that has been selected by the state under Secs. 6(a) - (b) of the
23 Alaska Statehood Act (P.L. 85-508, 72 Stat. 339) and that has been
24 determined to be mineral in character under AS 38.05.206 shall pay a
25 royalty on all minerals produced from land subject to the claim,
26 leasehold location, or mining lease during each calendar year.

27 (b) The production royalty is ~~two~~⁴ percent of net income as
28 determined under AS 43.65.

29 (c) The commissioner shall adopt regulations to implement this

1 section and to provide for combined reporting and paying of production
2 royalties for mining operations that include more than one mining
3 claim, leasehold location, or mining lease.

4 * Sec. 10. AS 38.05.240 is amended to read:

5 Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In
6 AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical,
7 geophysical, and airborne surveys conducted by qualified experts and
8 verified by a detailed report filed in the recording district office
9 in which the claim, leasehold location, or mining lease is located
10 which sets out fully (1) the location of the work performed in re-
11 lation to the point of discovery and boundaries of the claim, lease-
12 hold location, or mining lease, (2) the nature, extent, and cost of
13 it, and (3) the name, address, and professional background of the
14 person conducting the work. The commissioner, by regulation, shall
15 define the nature of acceptable survey work and the qualifications of
16 a person competent to perform this work. The airborne surveys, how-
17 ever, may not be applied as labor for more than two consecutive years
18 or for more than a total of five years on any one mining claim, lease-
19 hold location, or mining lease, and each of those surveys shall be
20 nonrepetitive of any previous survey on the same claim, leasehold
21 location, or mining lease.

22 * Sec. 11. AS 38.05 is amended by adding a new section to read:

23 Sec. 38.05.243. DETERMINATION OF MINERAL CHARACTER. (a) Land
24 on which a mining claim is located was not mineral in character at the
25 time of state selection unless, on the date the state selected the
26 land underlying the mining claim, the land was known to contain a
27 valuable mineral deposit in sufficient quantities that a prudent
28 person at that time would have expended time and resources to develop
29 the mineral deposit with a reasonable belief that the minerals would

1 be marketable at a profit.

2 (b) Land underlying a mining claim does not contain a valuable
3 mineral deposit unless, based on facts known at the date the land was
4 selected by the state, the land

5 (1) contained an actual exposure of valuable minerals capa-
6 ble of being marketed at a profit;

7 (2) was contiguous to an existing mining claim with an
8 actual exposure of valuable minerals capable of being marketed at a
9 profit;

10 (3) was within one mile from a placer deposit that has
11 existing reserves that were producing or capable of producing valuable
12 minerals at a profit if the mining claim is a placer claim; or

13 (4) was within one mile of a known mineral deposit that has
14 produced or is capable of producing minerals at a profit if the mining
15 claim is a lode claim.

16 * Sec. 12. AS 38.05.265 is amended to read:

17 Sec. 38.05.265. ABANDONMENT. Failure to [(1)] properly record a
18 certificate of location or a statement of annual labor, [OR (2)] file
19 with the director within the time prescribed a lease application, [OR
20 (3)] pay any required annual rental, pay any required production
21 royalty [OR RECEIVE CREDIT FOR RENTAL], or [(4)] keep location bound-
22 aries clearly marked [, ALL] as required by AS 38.05.185 - 38.05.275
23 and by regulations adopted under these sections [,] constitutes aban-
24 donment of all rights acquired under the mining claim [LEASE], lease-
25 hold location, lease, or site involved, and the claim, location,
26 lease, or site [IT] is subject to relocation by others. A [IF A
27 LOCATION IS NOT RELOCATED BY ANOTHER PERSON WITHIN ONE YEAR AFTER THE
28 FAILURE, THE] locator or claimant of an [THE] abandoned location [,]
29 or a successor in interest [,] may not [RETURN TO] relocate the

1 location until one year after abandonment [IT AS THOUGH IT HAD NEVER
2 BEEN LOCATED]. A statement of annual labor that [WHICH] does not
3 accurately set out the essential facts is void and of no effect. If
4 an annual rental or a royalty payment is deficient but is otherwise
5 timely paid, abandonment does not result if full payment is made
6 within

7 (1) the period prescribed by a deficiency notice from the
8 commissioner; or

9 (2) 30 days after a final judgment establishing the amount
10 due if the deficiency amount due was contested.

11 * Sec. 13. AS 43.05.230 is amended by adding a new subsection to read:

12 (h) The commissioner shall, upon request, furnish to the Depart-
13 ment of Natural Resources copies of tax returns, reports, documents
14 filed under AS 43.65.010 - 43.65.060, and the department's deter-
15 minations and workpapers. The Department of Natural Resources shall
16 maintain the confidentiality that the department is required to extend
17 to the returns, reports, documents, determinations, and workpapers
18 furnished to the Department of Natural Resources under this subsec-
19 tion.

20 * Sec. 14. AS 38.05.210(d) is repealed.

21 * Sec. 15. TRANSITION. (a) This Act applies to mining claims, lease-
22 hold locations, and mining leases located before, on, or after the effec-
23 tive date of this Act on land selected by the state under Secs. 6(a) - (b)
24 of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339).

25 (b) The first annual rental payment due under AS 38.05.211 as enacted
26 in sec. 9 of this Act is for the annual labor year beginning September 1,
27 1989.

28 (c) The first production royalty payment due under AS 38.05.212 as
29 enacted by sec. 9 of this Act is for production after December 31, 1989.

1 (d) The commissioner of natural resources shall adopt regulations to
2 implement the changes made by this Act. The regulations take effect under
3 the Administrative Procedure Act (AS 44.62) but not before August 31, 1989.
4 The regulations may defer the date for the first annual rental payment due
5 under AS 38.05.211 as enacted in sec. 9 of this Act.

6 * Sec. 16. Section 15(d) of this Act takes effect immediately under
7 AS 01.10.070(c).

8 * Sec. 17. Except for sec. 15(d), this Act takes effect August 31,
9 1989.

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Original sponsor: Rules/Governor

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 129 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to rent and royalty payments for a
7 mining claim, leasehold location, or mining lease, to
8 annual labor requirements for and to abandonment of a
9 mining claim, leasehold location, or mining lease and
10 to mining license tax information; and providing for
11 an effective date."

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

13 * Section 1. AS 38.05.205(c) is amended to read:

14 (c) A mining lease shall be for any period up to 55 years, and
15 is renewable if requirements for the lease remain satisfied. Annual
16 rental and production royalties shall be paid as required under
17 AS 38.05.211 and 38.05.212 [THE LESSEE HAS A RIGHT TO A NEW LEASE AT
18 THE END OF EACH LEASE PERIOD. THE COMMISSIONER MAY MAKE REASONABLE
19 ADJUSTMENTS OF THE RENTAL RATE AT THE END OF EACH 20 YEAR PERIOD,
20 BASED UPON CHANGED CONDITIONS IN PRODUCTION COSTS AND MARKETS]. A
21 valid mining claim located and held under AS 38.05.195 may be con-
22 verted to a lease at any time upon application by the owner, and
23 issuance by the commissioner. Rights [NO RIGHTS] granted by a mining
24 lease may not be exercised until the lease has been filed for record
25 in the recording district where the land is located.

26 * Sec. 2. AS 38.05.210(a) is amended to read:

27 (a) Labor shall be performed or improvements made annually on or
28 for the benefit or development of each mining claim, leasehold lo-
29 cation, and mining lease on state land except that where adjacent

1 claims, leasehold locations, or mining leases are held in common, the
2 expenditure may be made on any one claim, leasehold location, or
3 mining lease. The commissioner shall establish the date of the com-
4 mencement of the year during which the labor or improvements are to be
5 performed. Labor shall be performed at the annual rate of \$100 [\$200]
6 per claim or leasehold location, and \$100 for each partial or whole 40
7 acres of each mining lease. If more work is performed than is re-
8 quired by this section to be performed in any one year, the excess
9 [WORK UP TO A] value [OF \$800] may be applied against labor required
10 to be done during the subsequent year or years, for as many as four
11 years. Instead of performing annual labor, the holder of a claim,
12 leasehold location, or mining lease may make a cash payment to the
13 state equal to the value of the labor required by this subsection.

14 * Sec. 3. AS 38.05.210(b) is amended to read:

15 (b) During the year in which [THE PERFORMANCE OF] annual labor
16 is required or within 90 days after the close of that year, the owner
17 of the mining claim, leasehold location, or mining lease, or some
18 other person having knowledge of the facts shall record with the
19 recorder of the district in which the claim, leasehold location, or
20 mining lease is located a signed statement setting out the informa-
21 tion, as may be required by the commissioner, concerning the annual
22 labor of the preceding year, [AND] any labor in excess of that re-
23 quired for the preceding year, and any payment of cash instead of
24 annual labor. The statement, properly recorded, is prima facie evi-
25 dence of the performance of the labor. The failure of one of several
26 co-owners to contribute the proportion of the expenditures required
27 for annual labor from the co-owner shall be treated in accordance with
28 AS 38.05.215 - 38.05.235.

29 * Sec. 4. AS 38.05 is amended by adding new sections to read:

1 Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining
 2 claim, leasehold location, and mining lease, including a mining lease
 3 under AS 38.05.250, shall pay, in advance, annual rental for the right
 4 to continue to hold the mining claim, leasehold location, and mining
 5 lease, including a mining lease under AS 38.05.250. The annual rental
 6 amount shall be based on the number of the years since a mining claim,
 7 a leasehold location, or a mining lease's predecessor claim or lease-
 8 hold location was first located, as follows:

Number of Years Since First Located	Rental Amount Per Acre for Mining Leases	Rental Amount for Each Mining Claim or Leasehold Location
0 - 5	\$.50	\$ 20
6 - 10	\$1.00	40
11 - or more	\$2.50	100

16 (b) A claim, leasehold location, or mining lease located on or
 17 before August 31, 1989 is considered to have been first located on
 18 August 31, 1989 for purposes of determining the amount of rental under
 19 this section.

20 (c) The rental for each year shall be credited against the
 21 production royalty under AS 38.05.212 as it accrues for that year.

22 (d) The rental established under this section shall be revised
 23 each 10 years by the commissioner based on the consumer price index
 24 for Anchorage and published in regulations by the commissioner.

25 Sec. 38.05.212. PRODUCTION ROYALTY. (a) In exchange for and to
 26 preserve the right to extract and possess the minerals produced, the
 27 holder of a mining claim, leasehold location, or mining lease, includ-
 28 ing a mining lease under AS 38.05.250, shall pay a royalty on all
 29 minerals produced from land subject to the claim, leasehold location,

1 or mining lease during each calendar year.

2 (b) The production royalty is three percent of net income as
3 determined under AS 43.65.

4 (c) The commissioner shall adopt regulations to implement this
5 section and to provide for combined reporting and paying of production
6 royalties for mining operations that include more than one mining
7 claim, leasehold location, or mining lease.

8 * Sec. 5. AS 38.05.240 is amended to read:

9 Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In
10 AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical,
11 geophysical, and airborne surveys conducted by qualified experts and
12 verified by a detailed report filed in the recording district office
13 in which the claim, leasehold location, or mining lease is located
14 which sets out fully (1) the location of the work performed in re-
15 lation to the point of discovery and boundaries of the claim, lease-
16 hold location, or mining lease, (2) the nature, extent, and cost of
17 it, and (3) the name, address, and professional background of the
18 person conducting the work. The commissioner, by regulation, shall
19 define the nature of acceptable survey work and the qualifications of
20 a person competent to perform this work. The airborne surveys, how-
21 ever, may not be applied as labor for more than two consecutive years
22 or for more than a total of five years on any one mining claim, lease-
23 hold location, or mining lease, and each of those surveys shall be
24 nonrepetitive of any previous survey on the same claim, leasehold
25 location, or mining lease.

26 * Sec. 6. AS 38.05.265 is amended to read:

27 Sec. 38.05.265. ABANDONMENT. Failure to [(1)] properly record a
28 certificate of location or a statement of annual labor, [OR (2)] file
29 with the director within the time prescribed a lease application, [OR

1 (3)] pay any required annual rental, pay any required production
2 royalty [OR RECEIVE CREDIT FOR RENTAL], or [(4)] keep location bound-
3 aries clearly marked [, ALL] as required by AS 38.05.185 - 38.05.275
4 and by regulations adopted under these sections [,] constitutes aban-
5 donment of all rights acquired under the mining claim [LEASE], lease-
6 hold location, lease, or site involved, and the claim, location,
7 lease, or site [IT] is subject to relocation by others. A [IF A
8 LOCATION IS NOT RELOCATED BY ANOTHER PERSON WITHIN ONE YEAR AFTER THE
9 FAILURE, THE] locator or claimant of an [THE] abandoned location [,]
10 or a successor in interest [,] may not [RETURN TO] relocate the lo-
11 cation until one year after abandonment [IT AS THOUGH IT HAD NEVER
12 BEEN LOCATED]. A statement of annual labor that [WHICH] does not
13 accurately set out the essential facts is void and of no effect. If
14 an annual rental or a royalty payment is deficient but is otherwise
15 timely paid, abandonment does not result if full payment is made
16 within

17 (1) the period prescribed by a deficiency notice from the
18 commissioner; or

19 (2) 30 days after a final judgment establishing the amount
20 due if the deficiency amount due was contested.

21 * Sec. 7. AS 27.05 is amended by adding a new section to read:

22 ARTICLE 4. RECLAMATION.

23 Sec. 27.05.250. RECLAMATION. (a) The commissioner shall re-
24 quire reclamation of state land from the effects of mining.

25 (b) The commissioner shall adopt regulations under this section
26 and under AS 38 to implement (a) of this section. The regulations
27 must require a miner to submit to the commissioner and receive ap-
28 proval on a reclamation plan before undertaking any mining activity;
29 the regulations must also establish penalties for noncompliance with

1 the regulations. On a determination by the commissioner that a miner
2 has failed to follow the reclamation plan, the commissioner shall
3 require proof of financial responsibility before the miner undertakes
4 any further mining activity.

5 (c) In order to provide for an effective reclamation program,
6 when adopting regulations under this section and AS 38, the commis-
7 sioner shall consult with the commissioners of environmental conserva-
8 tion and fish and game.

9 (d) This section does not apply to reclamation carried out under
10 AS 27.21.

11 * Sec. 8. AS 43.05.230 is amended by adding a new subsection to read:

12 (h) The commissioner shall, upon request, furnish to the Depart-
13 ment of Natural Resources copies of tax returns, reports, documents
14 filed under AS 43.65.010 - 43.65.060, and the department's deter-
15 minations and workpapers. The Department of Natural Resources shall
16 maintain the confidentiality that the department is required to extend
17 to the returns, reports, documents, determinations, and workpapers
18 furnished to the Department of Natural Resources under this subsec-
19 tion.

20 * Sec. 9. AS 38.05.205(b), 38.05.210(d), and 38.05.250(c) are repealed.

21 * Sec. 10. TRANSITION. (a) This Act applies to mining claims, lease-
22 hold locations, and mining leases, including mining leases under AS 38.05.-
23 250, located before, on, or after the effective date of this Act.

24 (b) The first annual rental payment due under AS 38.05.211 as enacted
25 in sec. 4 of this Act is for the annual labor year beginning September 1,
26 1989.

27 (c) The first production royalty payment due under AS 38.05.212 as
28 enacted by sec. 4 of this Act is for production after December 31, 1989.

29 (d) The commissioner of natural resources shall adopt regulations to
CSSB 129()

1 implement the changes made by this Act. The regulations take effect under
2 the Administrative Procedure Act (AS 44.62) but not before August 31, 1989.
3 The regulations may defer the date for the first annual rental payment due
4 under AS 38.05.211 as enacted in sec. 4 of this Act.

5 * Sec. 11. The commissioner of natural resources shall adopt the regu-
6 lations required by AS 27.05.250, added by sec. 7 of this Act, by July 1,
7 1991.

8 * Sec. 12. Section 10(d) of this Act takes effect immediately under
9 AS 01.10.070(c).

10 * Sec. 13. Except for secs. 7, 10(d), and 11, this Act takes effect
11 August 31, 1989.

12 * Sec. 14. Sections 7 and 11 of this Act take effect June 1, 1990.
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go0759sD ✓
Bradley
4/20/89

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 129 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to rent and royalty payments for a
7 mining claim, leasehold location, or mining lease, to
8 annual labor requirements for and to abandonment of a
9 mining claim, leasehold location, or mining lease and
10 to mining license tax information; and providing for
11 an effective date."

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

13 * Section 1. AS 38.05.205(c) is amended to read:

14 (c) A mining lease shall be for any period up to 55 years, and
15 is renewable if requirements for the lease remain satisfied. Annual
16 rental and production royalties shall be paid as required under
17 AS 38.05.211 and 38.05.212 [THE LESSEE HAS A RIGHT TO A NEW LEASE AT
18 THE END OF EACH LEASE PERIOD. THE COMMISSIONER MAY MAKE REASONABLE
19 ADJUSTMENTS OF THE RENTAL RATE AT THE END OF EACH 20 YEAR PERIOD,
20 BASED UPON CHANGED CONDITIONS IN PRODUCTION COSTS AND MARKETS]. A
21 valid mining claim located and held under AS 38.05.195 may be con-
22 verted to a lease at any time upon application by the owner, and
23 issuance by the commissioner. Rights [NO RIGHTS] granted by a mining
24 lease may not be exercised until the lease has been filed for record
25 in the recording district where the land is located.

26 * Sec. 2. AS 38.05.210(a) is amended to read:

27 (a) Labor shall be performed or improvements made annually on or
28 for the benefit or development of each mining claim, leasehold lo-
29 cation, and mining lease on state land except that where adjacent

1 claims, leasehold locations, or mining leases are held in common, the
2 expenditure may be made on any one claim, leasehold location, or
3 mining lease. The commissioner shall establish the date of the com-
4 mencement of the year during which the labor or improvements are to be
5 performed. Labor shall be performed at the annual rate of \$100 [\$200]
6 per claim or leasehold location, and \$100 for each partial or whole 40
7 acres of each mining lease. If more work is performed than is re-
8 quired by this section to be performed in any one year, the excess
9 [WORK UP TO A] value [OF \$800] may be applied against labor required
10 to be done during the subsequent year or years, for as many as four
11 years. Instead of performing annual labor, the holder of a claim,
12 leasehold location, or mining lease may make a cash payment to the
13 state equal to the value of the labor required by this subsection.

14 * Sec. 3. AS 38.05.210(b) is amended to read:

15 (b) During the year in which [THE PERFORMANCE OF] annual labor
16 is required or within 90 days after the close of that year, the owner
17 of the mining claim, leasehold location, or mining lease, or some
18 other person having knowledge of the facts shall record with the
19 recorder of the district in which the claim, leasehold location, or
20 mining lease is located a signed statement setting out the informa-
21 tion, as may be required by the commissioner, concerning the annual
22 labor of the preceding year, [AND] any labor in excess of that re-
23 quired for the preceding year, and any payment of cash instead of
24 annual labor. The statement, properly recorded, is prima facie evi-
25 dence of the performance of the labor. The failure of one of several
26 co-owners to contribute the proportion of the expenditures required
27 for annual labor from the co-owner shall be treated in accordance with
28 AS 38.05.215 - 38.05.235.

29 * Sec. 4. AS 38.05 is amended by adding new sections to read:

1 Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining
2 claim, leasehold location, and mining lease, including a mining lease
3 under AS 38.05.250, shall pay, in advance, annual rental for the right
4 to continue to hold the mining claim, leasehold location, and mining
5 lease, including a mining lease under AS 38.05.250. The annual rental
6 amount shall be based on the number of the years since a mining claim,
7 a leasehold location, or a mining lease's predecessor claim or lease-
8 hold location was first located, as follows:

9 10 11 12	Number of Years Since First Located	Rental Amount Per Acre for Mining Leases	Rental Amount for Each Mining Claim or Leasehold Location
13	0 - 5	\$.50	\$ 20
14	6 - 10	\$1.00	40
15	11 - or more	\$2.50	100

16 (b) A claim, leasehold location, or mining lease located on or
17 before August 31, 1989 is considered to have been first located on
18 August 31, 1989 for purposes of determining the amount of rental under
19 this section.

20 (c) The rental for each year shall be credited against the
21 production royalty under AS 38.05.212 as it accrues for that year.

22 (d) The rental established under this section shall be revised
23 each 10 years by the commissioner based on the consumer price index
24 for Anchorage and published in regulations by the commissioner.

25 Sec. 38.05.212. PRODUCTION ROYALTY. (a) In exchange for and to
26 preserve the right to extract and possess the minerals produced, the
27 holder of a mining claim, leasehold location, or mining lease, includ-
28 ing a mining lease under AS 38.05.250, shall pay a royalty on all
29 minerals produced from land subject to the claim, leasehold location,

1 or mining lease during each calendar year.

2 (b) The production royalty is three percent of net income as
3 determined under AS 43.65.

4 (c) The commissioner shall adopt regulations to implement this
5 section and to provide for combined reporting and paying of production
6 royalties for mining operations that include more than one mining
7 claim, leasehold location, or mining lease.

8 * Sec. 5. AS 38.05.240 is amended to read:

9 Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In
10 AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical,
11 geophysical, and airborne surveys conducted by qualified experts and
12 verified by a detailed report filed in the recording district office
13 in which the claim, leasehold location, or mining lease is located
14 which sets out fully (1) the location of the work performed in re-
15 lation to the point of discovery and boundaries of the claim, lease-
16 hold location, or mining lease, (2) the nature, extent, and cost of
17 it, and (3) the name, address, and professional background of the
18 person conducting the work. The commissioner, by regulation, shall
19 define the nature of acceptable survey work and the qualifications of
20 a person competent to perform this work. The airborne surveys, how-
21 ever, may not be applied as labor for more than two consecutive years
22 or for more than a total of five years on any one mining claim, lease-
23 hold location, or mining lease, and each of those surveys shall be
24 nonrepetitive of any previous survey on the same claim, leasehold
25 location, or mining lease.

26 * Sec. 6. AS 38.05.250(c) is amended to read:

27 (c) Each [LEASES FOR SUBMERGED LAND SHALL BE CONDITIONED UPON
28 PAYMENT OF AN ANNUAL RENTAL OF \$3 AN ACRE. EXPENDITURES ON OR FOR THE
29 BENEFIT OF THE LEASEHOLD MAY BE CREDITED AGAINST THE RENTAL. RENT

1 SHALL BE PAID OR A STATEMENT OF ANNUAL LABOR SHALL BE RECORDED WITHIN
2 90 DAYS AFTER EACH ANNIVERSARY DATE OF THE LEASE. ALL] submerged land
3 mining lease [LEASES] shall be for a period of up to 20 years [,] and
4 for so long as there is production in paying quantities from the
5 leased area. [THE COMMISSIONER MAY MAKE REASONABLE ADJUSTMENTS OF THE
6 RENTAL RATE AT THE END OF EACH 10-YEAR PERIOD, BASED UPON CHANGED
7 CONDITIONS IN PRODUCTION COSTS AND MARKET.]

8 * Sec. 7. AS 38.05.265 is amended to read:

9 Sec. 38.05.265. ABANDONMENT. Failure to [(1)] properly record a
10 certificate of location or a statement of annual labor, [OR (2)] file
11 with the director within the time prescribed a lease application, [OR
12 (3)] pay any required annual rental, pay any required production
13 royalty [OR RECEIVE CREDIT FOR RENTAL], or [(4)] keep location bound-
14 aries clearly marked [, ALL] as required by AS 38.05.185 - 38.05.275
15 and by regulations adopted under these sections [,] constitutes aban-
16 donment of all rights acquired under the mining claim [LEASE], lease-
17 hold location, lease, or site involved, and the claim, location,
18 lease, or site [IT] is subject to relocation by others. A [IF A
19 LOCATION IS NOT RELOCATED BY ANOTHER PERSON WITHIN ONE YEAR AFTER THE
20 FAILURE, THE] locator or claimant of an [THE] abandoned location [,]
21 or a successor in interest [,] may not [RETURN TO] relocate the lo-
22 cation until one year after abandonment [IT AS THOUGH IT HAD NEVER
23 BEEN LOCATED]. A statement of annual labor that [WHICH] does not
24 accurately set out the essential facts is void and of no effect. If
25 an annual rental or a royalty payment is deficient but is otherwise
26 timely paid, abandonment does not result if full payment is made
27 within

28 (1) the period prescribed by a deficiency notice from the
29 commissioner; or

1 (2) 30 days after a final judgment establishing the amount
2 due if the deficiency amount due was contested.

3 * Sec. 8. AS 27.05 is amended by adding a new section to read:

4 ARTICLE 4. RECLAMATION.

5 Sec. 27.05.250. RECLAMATION. (a) The commissioner shall re-
6 quire reclamation of state land from the effects of mining.

7 (b) The commissioner shall adopt regulations under this section
8 and under AS 38 to implement (a) of this section. The regulations
9 must require a miner to submit to the commissioner and receive ap-
10 proval on a reclamation plan before undertaking any mining activity;
11 the regulations must also establish penalties for noncompliance with
12 the regulations. On a determination by the commissioner that a miner
13 has failed to follow the reclamation plan, the commissioner shall
14 require proof of financial responsibility before the miner undertakes
15 any further mining activity.

16 (c) In order to provide for an effective reclamation program,
17 when adopting regulations under this section and AS 38, the commis-
18 sioner shall consult with the commissioners of environmental conserva-
19 tion and fish and game.

20 (d) This section does not apply to reclamation carried out under
21 AS 27.21.

22 * Sec. 9. AS 43.05.230 is amended by adding a new subsection to read:

23 (h) The commissioner shall, upon request, furnish to the Depart-
24 ment of Natural Resources copies of tax returns, reports, documents
25 filed under AS 43.65.010 - 43.65.060, and the department's deter-
26 minations and workpapers. The Department of Natural Resources shall
27 maintain the confidentiality that the department is required to extend
28 to the returns, reports, documents, determinations, and workpapers
29 furnished to the Department of Natural Resources under this sub-

1 section.

2 * Sec. 10. AS 38.05.205(b) and 38.05.210(d) are repealed.

3 * Sec. 11. TRANSITION. (a) Sections 1 - 7, 9, and 10 of this Act and
4 this section apply to mining claims, leasehold locations, and mining leases
5 located before, on, or after August 31, 1989.

6 (b) The first annual rental payment due under AS 38.05.211 as enacted
7 in sec. 4 of this Act is for the annual labor year beginning September 1,
8 1989.

9 (c) The first production royalty payment due under AS 38.05.212 as
10 enacted by sec. 4 of this Act is for production after December 31, 1989.

11 (d) The commissioner of natural resources shall adopt regulations to
12 implement the changes made by secs. 1 - 7, 9, and 10 of this Act and this
13 section. The regulations take effect under the Administrative Procedure
14 Act (AS 44.62) but not before August 31, 1989. The regulations may defer
15 the date for the first annual rental payment due under AS 38.05.211 as
16 enacted in sec. 4 of this Act.

17 * Sec. 12. The commissioner of natural resources shall adopt the regu-
18 lations required by AS 27.05.250, added by sec. 8 of this Act, by July 1,
19 1991.

20 * Sec. 13. Section 11(d) of this Act takes effect immediately under
21 AS 01.10.070(c).

22 * Sec. 14. Except for secs. 8, 11(d), and 12, this Act takes effect
23 August 31, 1989.

24 * Sec. 15. Sections 8 and 12 of this Act take effect June 1, 1990.
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27
28
29

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 129
PUBLISH DATE: 4/11/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to rent and
royalty payments for a mining claim"
Sponsor: Rules/Governor
Requestor: Resources

Agency Affected: Revenue
BRU: Income and Excise Audit Division
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	50.9	50.9	50.9	50.9	50.9	50.9
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	17.9	17.9	17.9	17.9	17.9	17.9
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.2	0.0	0.0	0.0	0.0	0.0
LANDS & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	85.0	74.8	74.8	74.8	74.8	74.8
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	85.0	74.8	74.8	74.8	74.8	74.8
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	85.0	74.8	74.8	74.8	74.8	74.8

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: See attached.

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Division Date: April 13, 1989

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: April 13, 1989
Agency: Department of Revenue

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CSSB 129 Analysis

Personal Services

Revenue Auditor III	\$50.9
12 months, 18A	

Travel	\$5.0
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Contractual	\$17.9
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Communications	\$9.0
Courier	\$0.5
Printing	\$3.5
Advertising	\$1.7
Maintenance	\$0.7
Training	\$1.0
Postage	\$1.5

Supplies	\$1.0
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Equipment	\$10.2*
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Computer	\$3.5
Office Furniture	\$3.5
Computer Printer	\$3.2

TOTAL	\$85.0
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*One Time Item

CSSB 129
Prepared by:
Steven E. Kettel
Income and Excise Audit Division
April 13, 1989

ANALYSIS

CS SB 129 places responsibility for auditing a new production royalty on mining operations in the Department of Revenue. The royalty is computed at 2% of net income determined under AS 43.65, the Mining License Tax Act, presently administered by the Department.

Department of Natural Resources estimates that approximately 100 royalty production returns will be filed annually. Profitability of mining operations on state claims has traditionally been low for all but a few large operations. Section 9 of the bill provides that the rental for the state mining lease may be used as a credit against the royalty, further minimizing collections.

Fiscal Impact

Continuing expenses of \$75,000 per year will fund a new position to audit royalty production returns as required by AS 38.05.036(a)(2).

Department Position

In addition to objections raised by Department of Natural Resources, the Department opposes putting the audit responsibilities for the production royalty in this Department. This proposal is not destined to be a revenue raising measure, yet will require significant agency attention, diverting management and staff from more important tax matters, which are our primary responsibilities.

Also, with the link between the lease rental and the royalty, it would seem more logical to administer both programs in the same agency.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 129 (Resources) (a)
PUBLISH DATE: 4/12/89

FISCAL NOTE

REQUEST:

Revision Date: 11-Apr-89 Agency Affected: Natural Resources
Title: An Act relating to rent and Mining Management
royalty payments for mining claims. BRU: Mining Management
Sponsor: Senate Rules Components: Mining Management
Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		673.4	52.3	52.3	52.3	52.3
TRAVEL		9.0	2.0	2.0	2.0	2.0
CONTRACTUAL		248.8	10.0	10.0	10.0	10.0
SUPPLIES		29.0				
EQUIPMENT		13.0				
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	973.2	64.3	64.3	64.3	64.3
CAPITAL						
REVENUE		75.0	75.0	77.0	77.0	80.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		973.2	64.3	64.3	64.3	64.3
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	973.2	64.3	64.3	64.3	64.3

POSITIONS:

FULL-TIME		2.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY		2.0				

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Gerald Gallagher Phone: 762-2165
Division: Mining Management Date: 11-Apr-89
Approved by Commissioner: Lennie Gorsuch Date: 11-Apr-89
Agency: Department of Natural Resources

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

CS for SB121 Bill Analysis

Determining whether the 104.5 million acres of 6(a) and (b) state lands are "mineral-in-character at the time of state selection" will require a comprehensive evaluation of the selection history, mineral occurrences and location of state and federal mining claims on a township (status plat) scale. The department has prepared the following 14 step process:

- 1) Conduct a literature study for mineral occurrences. These occurrences are put on the ARC/INFO system as mineral occurrence polygons. This information is made available in digital form to LRIS. Dates are associated with all of these polygons as attribute information.
- 2) LRIS gets a digital dump from BLM ALARS system of the 110,000 federal mining claims. This information is processed onto regional GIS maps that will also contain the polygons from step one. Dates are associated with this information as attributes.
- 3) LRIS gets a digital dump from LAS of the 45,000 state mining claims. Dates are associated with this information as attributes. This information is processed onto the regional GIS maps mentioned above.
- 4) DGGS and Mining personnel review the GIS regional maps showing mineral polygons from literature, the federal mining claim scatter, and the state mining claim scatter. Based on this review, LRIS is instructed as to which federal mining claims must have actual locations determined.
- 5) The federal files in Anchorage and Fairbanks are searched for the above identified location maps by knowledgeable Mining staff.
- 6) The above location maps are converted to digital format by LRIS.
- 7) This incremental location information is added to the above regional GIS information by LRIS.
- 8) Division of Mining determines which of these occurrences (literature polygons and federal mining claims) qualify as "mineral-in-character".
- 9) The final mineral occurrence polygons are processed into the GIS data. These polygons are represented relative to the scatter of state mining claims. Regional products are produced by LRIS.

- 10) Title is given these regional products. In areas where state mining claims are in the vicinity of mineral occurrence polygons, title searches are done to determine title lines and dates of selection.
- 11) Title manuscripts onto copies of state status plats, the relevant title lines, and notes the date of selection for the land.
- 12) LRIS produces map overlays at the status plat scale of all mineral occurrence polygons, with dates associated.
- 13) Number twelve will be used by Mining to determine which claims are subject to rents and or royalties.
- 14) Status graphics devises a method of standard notation for putting these mineral occurrence polygons onto the status plats for purposes of identifying for the public and the land managers what areas have a "6(i)" liability associated with staking a mining claim.

This process relies on the Departments Geographic Information System (GIS) computer to compile data and produce maps at the scale of state status plats. Over 12,000 individual maps will have to be made in this process.

The Department has determined it will be more efficient and cost effective to conduct this assessment on a statewide basis for all 6(a) and 6(b) lands rather than react to requests for such determinations on each individual mining claim. (There are approximately 45,000 claims.) As such, all costs for mineral determinations are limited to a single year, rather than spread out over several years.

Continuing expenses of \$52.0 per year will fund a new position to issue leases as required by AS 38.05.205(b). These leases require notice, agency and public comment, and land title analysis. This position will be responsible for that additional work load under this bill.

Position Title <u>Geologist IV</u>		No. of Positions <u>1</u>	Range/Step <u>20A</u>	Barg. Unit <u>SU</u>
Time Status <u>Non-Perm</u>	Staff Months <u>12</u>	Location <u>Anchorage</u>		Election District
Justification				
<p>This position will serve as the Project Manager for the mineral-in-character determinations required under the CS for SB 129. Oversight and technical quality control of the compilation of geologic, land status and mining claim data and adherence to schedules will be the responsibility of this person. See attachments to bill analysis for the full scope of this project.</p>				
Type of Expenditure		Amount		
1	2	3		
Salary	42.8			
Benefits	17.1			
Premium Pay				
Other				
Total Personal Services		59.8		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		59.8		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	59.8		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Natural Resources
 BRU Minerals Management
 Component Minerals Management

Page of
 Revised Date

FY 90

Position Title		Natural Resources Manager I		No. of Positions	1	Range/Step	18A	Barg. Unit	GGU
Time Status		Staff Months		Location		Election District			
Permanent		12 months/year		Anchorage					
Justification									
<p>During the first 12 months, this staff member will assist the project manager in the compilation and assessment of mining claims and land status data. After the final mineral-in-character determinations are completed, this position will process leases and track rent and royalty payments from these leases. See the bill analysis for a full description of this project.</p>									
Type of Expenditure			Amount						
1			2			3			
Salary			37.4						
Benefits			14.9						
Premium Pay									
Other									
Total Personal Services						52.3			
Travel									
Contractual									
Commodities									
Equipment									
Other									
Total Cost						52.3			
Funding Source for Total Cost									
Federal Receipts			1002						
G. F. Match			1003						
General Fund			1004			52.3			
I-A Receipts			1006						
CIP Receipts			1061						
Other									

**Request For
New Position**

Agency Natural Resources
 BRU Minerals Management
 Component Minerals Management

Page of
 Revised Date

FY 90

Position Title Analyst Programmer I		No. of Positions 2	Range/Step 13A	Barg. Unit GGU
Time Status Non-Perm	Staff Months 24	Location Anchorage		Election District
Justification				
<p>These staff will be responsible for inputting geologic, land status and mining claim data into the Geographic Information Computer System (GIS). In addition, they will perform quality control of all data and maps generated. See bill analysis for a full description of this project.</p>				
Type of Expenditure		Amount		
1	2	3		
Salary	52.9			
Benefits	21.2			
Premium Pay				
Other				
Total Personal Services		74.1		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		74.1		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	74.1		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Natural Resources
 BRU Minerals Management
 Component Minerals Management

Page of
 Revised Date

FY 90

STEVE COWPER
GOVERNOR



129

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 19, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making certain changes in the laws regarding state mining claims, leasehold locations, and mining leases. The main purpose of the bill is to resolve the long-standing "6(i)" issue, which has cast a legal cloud over the state's mining laws since statehood. The bill achieves that purpose by imposing rent and royalty requirements on state mining claims, leasehold locations, and mining leases. Those in the mineral industry will benefit from the added legal security of their mining interests, while all the people of the state will benefit from the rent and royalty income to the state.

Under existing state law, rights to "locatable" minerals (those minerals subject to location under the federal mining law at the time of statehood, including such minerals as gold, silver, and zinc) may be acquired, except in offshore areas, by staking a mining claim under AS 38.05.195, or by staking a leasehold location and converting it to a mining lease under AS 38.05.205. Present state law imposes no rent or royalty upon a mining claim under AS 38.05.195 or leasehold location under AS 38.05.205, and allows the rental requirement for a mining lease to be discharged through the performance of annual labor. AS 38.05.205(b).

In Trustees for Alaska v. State of Alaska, 736 P.2d 324 (Alaska 1987), cert. denied ___ U.S. ___, 108 S.Ct. 2013, 100 L.Ed.2d 601 (1988), the Alaska Supreme Court found that the state's mining law fails to comply with the minimum requirements in sec. 6(i) of the Alaska Statehood Act. In particular, the court found that cash rents or royalties are required for mining rights in mineral land granted under sec. 6 of the Statehood Act.

This bill conclusively resolves the "6(i)" issue within the context of existing law. The bill will minimize administrative burdens for the Department of Natural Resources and will generate significantly more in general fund revenue than it will cost to administer. Passage this session will remove the threat of an injunction against mining during this upcoming season. The balance of this letter discusses the particular changes proposed.

The bill amends AS 38.05.210 to make the annual labor requirement applicable to all mining claims, leasehold locations, and mining leases, while reducing the amount from \$200 to \$100. Cash payment in place of the annual labor will also be allowed. In addition, the current dollar limit on the application of excess work to future years is being converted to a durational limit of four years, and an unnecessary reference to AS 38.05.240 and 38.05.242 is also deleted. Section 2 of the bill.

Section 3 of the bill adds two new sections. Proposed AS 38.05.211 provides for a minimum annual rental on each mining claim, leasehold location, and mining lease. The minimum annual rental will be on a sliding scale ranging from a minimum of \$.50 per acre for a mining interest up to five years old, to a minimum of \$5 per acre for mining interests held for more than 20 years.

Proposed AS 38.05.212 provides for a minimum production royalty on all minerals produced from land subject to a claim, leasehold location, or mining lease. The production royalty will be determined on a sliding scale measured on gross income. At each level of gross income, the higher of a minimum royalty or a specified percentage of net income will be payable. The details for computing gross and net income will be established by regulations.

Section 5 of the bill amends AS 38.05.265 to provide that a mining interest is considered abandoned if no annual rental or production royalty is paid by the deadline, which will be set by regulation.

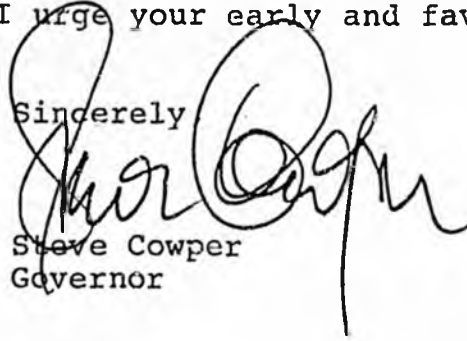
Section 6 of the bill amends AS 43.05.230 to require the commissioner of revenue to provide tax returns, reports, and documents relating to the mining license tax to the Department of Natural Resources, on the condition that confidential information be protected.

The bill includes a transition section that provides for commencement dates for the annual rental and royalty requirements. These dates will allow sufficient time for the Department of Natural Resources to adopt regulations implementing the bill.

The bill also includes technical revisions, a repealer section, and other conforming amendments, to make changes necessary to achieve the purposes generally described above.

Passage of this bill will end a long and troubled period of uncertainty under the state mining laws. It will give holders of interests in mining claims greater legal security, and the people of the State of Alaska a fair return on the public's mineral resources. I urge your early and favorable consideration of this bill.

Sincerely

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name.

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Rent & Royalty Payments for
Mining Claims
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: DNR
 BRU: Mining Management
Management/Administration
 Components: Property Management
Admin. Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		35,900	37,000	38,200	39,400	40,800
TRAVEL		0	0	0	0	0
CONTRACTUAL		1,500	1,500	1,500	1,500	1,500
SUPPLIES		500	500	500	500	500
EQUIPMENT		4,000	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		41,900	39,000	40,200	41,400	42,800
CAPITAL		240,000	0	0	0	0
REVENUE		750,000	750,000	770,000	770,000	800,000

FUNDING: (Thousands of Dollars)

GENERAL FUND	281,900	39,000	40,200	41,400	42,800
FEDERAL FUNDS					
OTHER					
TOTAL					

POSITIONS:

FULL-TIME	1	1	1	1	1
PART-TIME					
TEMPORARY					

ANALYSIS : (Attach a separate page if necessary)

See attached sheet

Prepared by: Gerald Gallagher Phone: 762-2165
 Division: Mining Date: 1/6/89
 Approved by Commissioner: *Jennie Gorsuch* Date: 1-6-89
 Agency: DNR

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

Assumptions: As a result of the May, 1987 Alaska Supreme Court opinion, the State's mining laws will need to be amended to require the payment of a cash rent and production royalty. There are currently over 40,000 state mining claims and 200 mining operations on state land. Each claim will be assessed a rental of \$0.50 per acre (\$20 per claim) and each operation a minimum royalty of \$200 or 1% of the net profits, whichever is greater. DNR estimates revenue derived from rents and royalty will be \$750,000 in FY 90 and increase to \$800,000 by FY 94. Rental payments should account for \$650,000 and the royalty payments are estimated to be \$100,000 initially.

Program Summary: This expenditure is necessary to complete the additional work load of collecting rent and royalty payments and maintaining both the current mining records system and the state's revenue and billing system.

Positions: A new "Accounting Technician I" position is needed in the Mining and Administration BRU. This position will maintain accounts in the LAS's Revenue and Billing System, audit billing registers, and prepare worksheets and reports as necessary to assure proper accounting and coding of these funds.

Other Expenditures: A one-time capital appropriation of \$240,000 is necessary to purchase a new computer system in the "Mining Management" BRU. This new system will allow the Division of Mining to handle the additional workload of rent and royalty payment tracking and lease status verification without additional staff.

General fund revenues generated under this proposal will exceed expenditures in every year. During FY 90, a general fund contribution of \$468,000 after all expenses is estimated. Beginning in FY 91, general fund contribution of at least \$700,000 annually are expected after operating expenses are deducted.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 129 (b)
PUBLISH DATE: 1/19/89

FISCAL NOTE

REQUEST:

Revision Date: January 13, 1989
Title: Rent and Royalties for
State Mining Claims
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Revenue
BRU: Income and Excise Audit Division
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Date: January 13, 1989

Approved by Commissioner: Hugh Malone *Hugh Malone FOR* Date: January 13, 1989
Agency: Revenue

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Prepared by: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
January 13, 1989

Fiscal Note Analysis

Legislative action is necessary to cure a defect in the state's mining laws which do not comply with Section 6(i) of the Statehood Act. The central problem - - Alaska's mining leasing system does not require the payment of cash rent or royalties.

This legislation introduces a system of rental and royalty charges against those miners with claims on state land. There will be no fiscal impact upon the Department of Revenue. DNR has prepared a fiscal note showing the anticipated revenues this proposal will generate.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

FEB 7 1989
STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

February 7, 1989

The Honorable Bette Fahrenkamp
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Per your Senate Resource Committee request, outlined are the responses to your questions.

1. What taxes are miners subject to?

- a) Mining license tax. (AS43.65) This is a tax based upon the net income of a mining operation. Generally net income is gross income less direct and indirect mining expenses, depletion, depreciation and royalty payments. Those receiving mining royalty income also pay this tax and cannot deduct any expenses except depletion. Rates are progressive from 3-7% of net income.
- b) Corporate net income tax. (AS43.20) Only those mining operations organized as a corporation pay this tax. (Less than a dozen in 1987).
- c) Motor fuel tax. (AS43.40) All fuel consumed in an internal combustion engine taxed at 8¢ per gallon. Miners generally are entitled to a 6¢ per gallon refund for off-highway consumption.

2. How much tax does the mining industry currently pay?

The total taxes paid by mining operations in the state of Alaska:

a) Mining License Tax	FY 85	\$259,464
	FY 86	317,014
	FY 87	259,335
	FY 88	402,344
b) Corporate Net Income Tax Received	1985	\$106,503
	1986	632,162
	1987	38,286
c) Motor Fuel Tax	1985-1987	unavailable

The Honorable Bette Fahrenkamp
February 7, 1989
Page Two

We are unable to make this determination because the returns filed do not give us this specific user detail.

3. How much gross business income is reported by the mining industry?

The gross income from sales of mining activities reported on all Mining License returns filed:

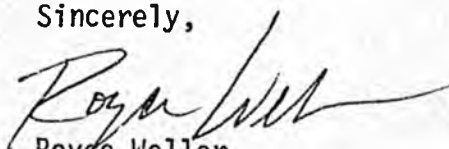
1985	\$57,658,225
1986	52,044,837
1987	47,990,426

4. How much royalty income is currently reported?

The gross royalty income received by mine lessors from mine operators reported for the following years was:

1985	\$ 1,797,953
1986	1,490,827
1987	1,126,506

Sincerely,


Royce Weller
Assistant Commissioner

RW:JH:jm
89-36

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 7, 1989

FEB 10 1989

The Honorable Bettye Fahrenkamp
Senator
Chairman Natural Resources Committee
P.O. Box V
Juneau, AK 99811

Re: Whether a state employee is prohibited under the ~~Ethics Act~~ from disseminating information concerning abandoned mining claims

Dear Senator Fahrenkamp:

At the hearing on SB 129 on January 27, 1989 Senator Zharoff inquired whether there would be any ethical violation if a state employee communicated information concerning abandoned mining claims to friends or relatives. You requested that I research the matter and report to you. This letter contains the results of my review.

The short answer to your inquiry is that there is no apparent violation of the ethics law by the mere communication by a state employee to any third party of the fact that a mining claim is abandoned, regardless of the relationship of the third party to the state employee.

The governing statute is the Alaska Executive Branch Ethics Act (the "Ethics Act"), AS 39.52.010 -- 39.52.960. The section which is most specifically relevant to your question is AS 39.52.140(a). That section provides

A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.

(emphasis added). This section does not make it an ethical violation for a Division of Mining ("division") employee to

February 7, 1989

disseminate information concerning abandoned mining claims to third parties. This is because the information available to the division is nothing more than is already available to the public. Indeed, DNR is not even the first agency to have information that would indicate that a mining claim has been abandoned. A miner loses his mining rights if he fails to record with the recorder's officer in the recording district in which the mining claim is located. DNR finds out who did and who did not timely file some time after the filing deadline. In the meantime, any member of the public would have the opportunity to check the recorder's files. Consequently, a DNR official would have no "inside" information which could be used in an unfairly advantageous way by the employee, or a friend or family member of the employee.

Although the section quoted above resolves the particular issue raised, a few other matters are worth noting. AS 39.52.120(b)(3) prohibits a state employee from using "state time, property, equipment, or other facilities to benefit personal or financial interest." Thus, an employee would not be permitted to research mining records for purposes of determining what claims had lapsed during state time. Nor could a state employee use state equipment or facilities for such purposes, except to the extent that members of the public could also use the equipment or facilities.

Finally, you may wish to be aware of AS 39.52.150(a), which prohibits a public officer or an immediate family member from attempting to

acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan.

This section does not create a per se bar to the holding of a mining claim or mining lease by a state employee. However, to the extent mining claims are considered "leases," a state employee may be precluded from acquiring or holding a mining claim or mining lease, depending on the particular circumstances of his or her duties with the state.

We have made a review of the advisory opinions issued under AS 39.52.240. We were unable to locate any opinion bearing on this issue.

The Honorable Bettye Fahrenkamp - 3 -

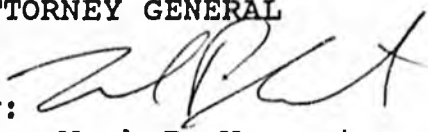
February 7, 1989

If you have any further question, please do not hesitate to contact me.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Mark P. Worcester
Assistant Attorney General

MPW:so

cc: Gerald Gallagher, Director, Division of Mining
Robert Maynard, Assistant Attorney General

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465 4797

Box 55028
North Pole, Alaska 99705
(907) 488 0862



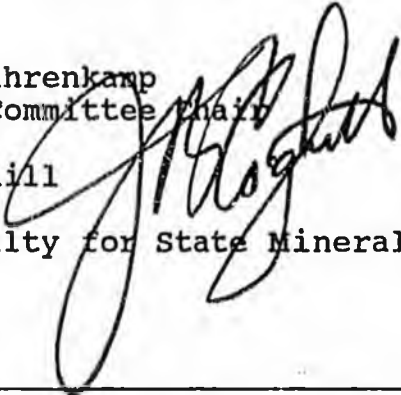
MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chair

From: Senator Jack Coghill

Re: 6(i) Rent or Royalty for State Mineral Lands Issue

Date: January 12, 1989



This memorandum is to explain my position on the 6(i) issue and to encourage you to address this important issue as early in the committee process as possible. Considering the importance of the resolution of this issue to our mining industry, and my new minority position, I do not feel it would be in the best interest of the industry for me to introduce a legislative solution at this time. Instead, I offer you the following points for your consideration and my assistance in formulating a solution, should you need it.

1. It is important that the basic issue raised by the Trustees for Alaska in bringing their lawsuit to the courts is considered in our legislative solution.

Trustees, as you will recall, claimed Alaska's "current system allowing the extraction of minerals deposits from state lands, AS 38.05.185" (Mining Rights. Generally.) "violate[d] Section 6(i) of the Alaska Statehood Act because it does not require the payment of rents or royalties from state lands whose mineral character was known at the time of state selection."

It is my position that Alaska's best interest would be served by limiting the total number of acres requiring rents or royalties, to those lands known to be mineral in character at the time of statehood. Or to those lands that were selected because of known mineral potential. Further I would suggest that those state lands that have been classified, as a matter of selection as mineral lands, would be the only lands affected by rents or royalties. This would affect approximately 2.7 million acres rather than the state's full entitlement.

My interest in this approach stems from a concern that inclusion of all state land under 6(i) may instigate a challenge of DNR's ability to close lands to mineral entry. You will recall the 6(i) language reserving "the right to

prospect for, mine, and remove the same[.]" from the lands granted by this section. Also, this approach may open the door to a state patent process as an incentive to discovery, on lands not known to be mineral in character at the time of selection.

2. There are several terms which the Alaska Supreme Court used in its May 1, 1987 decision, but did not define, that are of major importance. The term "mineral in character" is one. I think it is important that the solution contain a bench mark indicator of mineral in character. Something like within a one mile radius of mining claims existing at the time of statehood or, perhaps, even those lands classified as mineral lands by DNR up to May 1, 1987.

The other term the court failed to define was the "time of state selection". You will recall that early state land selections were made on a basis of settlement, agricultural and community needs. It wasn't until ANCSA and FLPMA that the state really started to look at the lands ability to produce metalliferous minerals as a criteria for selection. These two federal acts greatly changed the pool of land available for state selection. Furthermore, ANILCA removed many millions of acres from the available land pool. It is evident that since statehood the federal rules under which the state could make land selections have continuously changed. Therefore it would seem most logical to tie a definition of this term to a date as close to statehood as possible, before ANCSA for instance.

3. It is my understanding the administration will be recommending a solution that:

- a. asks a rent or royalty be applied to all State land;
- b. establishes a statutory lease, which would be similar to our current mining claim system; and
- c. proposes a rent of not less than 25 cents per acre and a royalty of not less than 1 percent of net profits.

My position on these points is that "a" is a quick and dirty way out which will create further litigation; "b" is a good idea if it is worded right, and protects the discovery process and provides for tenure on existing claims (and no use it or lose it clauses); and "c" seems to be creating another "Usibelli Coal Royalty" situation, but I don't know what is proposed as a trigger mechanism to raise the rent or royalty above the "no less than" floor.

I received estimates in November 1988 that this plan would generate about a million dollars in revenue at the lowest rates. You should be aware however, that analysis of what other states, or even Canada has done, only exemplifies that there is no basis of consistency for rent or royalty rate levels.

You should also be aware that at one point last year I looked at changing our Mining Licence Tax statute to meet the needs of the Alaska Supreme Court, this option has some merit. But I think you will agree that generally, the levels of taxation and annual labor requirement costs should be included

in the discussions of adequate returns on our mineral resources.

4. The information I received some time ago indicates the environmental community will file suit in Federal Court if we use a mineral in character approach. Furthermore, they will argue their perspective in committee from a concept of "public trust" and they will demand a strong state reclamation law. As you know the DNR presently deals with reclamation through the land use permitting process.

Regarding the lawsuit possibility I believe that the federal courts were the proper forum for the original case, not state courts. I also think that the environmentalists would lose a mineral in character case in federal court for several reasons:

a. The first sentence of 6(i) relinquishes the federal governments claim to minerals in lands granted under the Statehood Act. "All grants made or confirmed under this Act shall include mineral deposits."

b. The second sentence of 6(i), if mineral in character is not the criteria, mandates that all state lands sold, granted, deeded, or patented, remain open to prospecting and mining. "The grants of mineral lands to the State of Alaska under subsection (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine and remove same."

I think you will agree that we could have a problem similar to the Mental Health Lands problem if anything other than a mineral in character standard is not used.

c. Since the Reagan administration, the actions of the U.S. Supreme Court reflect a general shift of primary resource management policy to the states, where lands other than federal lands are concerned.

So far as the "public trust" concept of natural resource management is concerned, I would like to share with you an outline I found recently. Basically it states the four principle areas of responsibility to the public trust are:

1. that governments have a duty to prosperity, that is to provide for the common good of present and future generations;

2. that the land and water are the real basis of all wealth and thus the basis from which the common good is derived;

3. that resource managers must develop plans for the future which give hope to the citizenry that government and industry can provide sustained opportunity; and

4. that a fundamental responsibility of government is to protect the values and treasures of our natural heritage.

I trust this is nothing new to you, but this short synopsis may be useful to you in your deliberations, as it is my view that these principle must be applied in balance.

To conclude this point, I would encourage you to keep the issues separate. 6(i) is a rent or royalty issue not a reclamation issue.

This is a rather lengthy memo and I apologize for that. My final comment in closing is, I believe that in managing our public resource assets, we must remember the three basic components of production from classical economic theory, they are land, labor and capital. How the administration, and we in the legislature, address these components in law and regulations, will determine the productivity of the Alaskan economy during the coming years.

I believe that action on 6(i) this session will not only set a trend for Alaskan land based economic activities, but it will also send a clear message to those interested in doing business in Alaska. My door is open to you and any suggestions you may have, as to how I can assist your efforts to get a solid, positive, resolution of this critical mining issue.

Please feel free also, to have your staff person on this issue use Bruce Geraghty in my office, to familiarize themselves with the 6(i) information that is available.

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chair
and Members of the Senate Resource Committee

From: Senator Jack Coghill

Re: 6(i) Comments for Committee Meeting

Date: February 22, 1989

A large, stylized handwritten signature in black ink, likely belonging to Senator Jack Coghill, written over the right side of the memorandum text.

Due to the technical nature of my comments today before the committee regarding Mineral In Character lands, I have attached a copy of the text for your consideration.

MINERAL IN CHARACTER

1. THERE IS NO DEFINITION OF "MINERAL IN CHARACTER" IN FEDERAL STATUTES; HOWEVER, OVER THE YEARS THE COURTS HAVE DEFINED IT IN A VARIETY OF WAYS.

2. THE MOST AUTHORITATIVE TEST FOR DETERMINING THE MINERAL CHARACTER OF LAND WAS ANNOUNCED BY THE UNITED STATES SUPREME COURT IN DIAMOND COAL AND COKE v. UNITED STATES IN 1914, AND IT IS STILL USED TODAY. IN THIS CASE THE SUPREME COURT SAID:

"IT MUST APPEAR THAT THE KNOWN CONDITIONS ... WERE PLAINLY SUCH AS TO ENGENDER THE BELIEF THAT THE LAND CONTAINED MINERAL DEPOSITS OF SUCH QUALITY AND QUANTITY AS WOULD RENDER THEIR EXTRACTION PROFITABLE AND JUSTIFY EXPENDITURES TO THAT END."

THIS TEST CONTINUES TO BE QUOTED IN NUMEROUS FEDERAL COURT CASES AND INTERIOR DEPARTMENT ADMINISTRATIVE ACTIONS.

IT IS CLEAR THAT THE STATE SUPREME COURT HAD THIS IN MIND WHEN IT STATED WE WERE IN VIOLATION OF 6(i) BECAUSE WE DIDN'T "REQUIRE THE PAYMENT OF RENTS OR ROYALTIES FROM STATE LANDS WHOSE MINERAL CHARACTER WAS KNOWN AT THE TIME OF STATE SELECTION."

3. THE STATE SUPREME COURT FURTHER DIRECTED US TO ESTABLISH A LEASING SYSTEM WHICH INCLUDES "SOME PROCESS FOR DETERMINING

WHICH LANDS WERE OF KNOWN MINERAL CHARACTER AT THE TIME OF SELECTION AND" MUST INCLUDE PAYMENT OF RENTS OR ROYALTIES "FOR THE EXTRACTION OF MINERAL DEPOSITS FROM SUCH LANDS."

SB 161 PROVIDES ALL THE MECHANISMS TO FULLY COMPLY WITH THE COURTS DECISION WITHOUT JEOPARDIZING THE COMPETITIVE POSITION OF STATE LANDS TO FEDERAL OR PRIVATE LANDS.

4. NOW, HOW DO WE MAKE THE MINERAL CHARACTER DETERMINATION? THE PROCESS IN SB 161 IS THIS. EXISTING CLAIM HOLDERS HAVE 2 YEARS TO MAKE APPLICATION TO THE COMMISSIONER FOR A DETERMINATION, AND NEW CLAIMANTS HAVE ONE YEAR FROM THE DATE THEY FILE THE CLAIM. THE COMMISSIONER HAS 3 YEARS FROM THE DATE OF THE APPLICATION TO DETERMINE IF THE LAND WAS MINERAL IN CHARACTER AT THE DATE OF STATE SELECTION.

IN THE FEDERAL SYSTEM, THE DEFINITION AND EVIDENCE NEEDED TO MAKE A MINERAL IN CHARACTER DETERMINATION IS THIS:

"IT IS NOT ESSENTIAL THAT THERE BE AN ACTUAL DISCOVERY OF MINERAL ON THE LAND. IT IS SUFFICIENT TO SHOW ONLY THAT KNOWN CONDITIONS ARE SUCH AS REASONABLE TO ENGENDER THE BELIEF THAT THE LAND CONTAINS MINERAL OF SUCH QUALITY AND IN SUCH QUANTITY AS TO RENDER ITS EXTRACTION PROFITABLE AND JUSTIFY EXPENDITURES TO THAT END. SUCH BELIEVE MAY BE PREDICATED UPON GEOLOGICAL CONDITIONS, DISCOVERIES OF MINERALS IN ADJACENT LAND AND OTHER OBSERVABLE EXTERNAL CONDITIONS UPON WHICH

PRUDENT AND EXPERIENCED MEN ARE SHOWN TO BE ACCUSTOMED TO ACT."

IF YOU WILL CAREFULLY READ SECTION 5 OF SB 161, YOU WILL FIND IT CONTAINS ALL OF THE ELEMENTS OF THIS FEDERAL DEFINITION.

THIS DEFINITION AND SB 161'S PROCESS IS FULLY SUPPORTED BY SEVERAL IMPORTANT FEDERAL CASES, NOTABLY:

DIAMOND COAL & COKE CO. v. U.S., 233 US 236, 248-249
(1914)

U.S. v. SOUTHERN PACIFIC CO., 251 US 1, 14 (1919)

LADEN v. ANDRUS, 595 F2d 482, 489-490 (9th Cir 1979)

U.S. v. SOUTHERN PACIFIC TRANSPORTATION CO., 66 IBLA 191,
195 (1982)

THE SIGNIFICANCE OF THESE CASES IS THAT THEY ALL AGREE THAT AN ACTUAL DISCOVERY OF MINERALS WITHIN A TRACT OF LAND IS NOT REQUIRED AND THAT THE FOLLOWING TYPES OF EVIDENCE SUPPORT A DETERMINATION OF MINERAL IN CHARACTER.

1. DISCOVERIES OR MINES IN ADJACENT LAND;
2. OTHER EXTERNAL CONDITIONS THAT CAUSE PRUDENT AND EXPERIENCED MEN TO ACT AND MAKE EXPENDITURES; AND
3. FAVORABLE GEOLOGICAL CONDITIONS WITHIN THE TRACT.

5. SO FAR AS SB 161 IS CONCERNED, OUR RESEARCH OF THE FEDERAL SYSTEM INDICATES THAT THERE IS A RELATIONSHIP BETWEEN DISCOVERY AND MINERAL IN CHARACTER. BRIEFLY IT CAN BE STATED THAT IF YOU HAVE A DISCOVERY, YOU HAVE MINERAL IN CHARACTER LAND. IF YOU HAVE MINERAL IN CHARACTER LAND YOU DO NOT NECESSARILY HAVE A DISCOVERY.

HOWEVER THE CONCERN WE HAVE, AND HAS NOT BEEN DISCUSSED BY THE ADMINISTRATIONS LEGAL COUNCIL TO OUR KNOWLEDGE, IS THE BODY OF FEDERAL LAW THAT INDICATES IT HAS NEVER BEEN THE POLICY OF THE CONGRESS TO DISPOSE OF MINERAL LANDS UNDER THE AGRICULTURAL OR NONMINERAL LAWS AND THAT TITLE TO KNOWN MINERAL LAND CANNOT BE ACQUIRED UNDER AN AGRICULTURAL OR NONMINERAL ENTRY.

I HAVE A CONCERN IF WE DO NOT FOCUS 6(i) LEGISLATION ON LANDS WHERE MINING AND MINERAL INTERESTS ARE FOCUSED, WE MAY BE INVITING LITIGATION AT THE LEVEL OF THE RECENT MENTAL HEALTH LANDS LITIGATION, ESPECIALLY IF WE GO BEYOND THE SECTION 6(a) AND (b) LANDS.

FURTHERMORE 6(i) RESERVES THE "RIGHT TO PROSPECT FOR, MINE, AND REMOVE" THE MINERALS FROM THE MINERAL LANDS GRANTED UNDER THIS SECTION. WHAT DOES THIS DO TO OUR ABILITY TO CLOSE STATE LANDS TO MINERAL ENTRY, ESPECIALLY IF ALL LANDS ARE MINERAL IN CHARACTER? I THINK THIS DETERMINATION REPRESENTED IN THE ADMINISTRATIONS BILL, MAY INVALIDATE MINERAL CLOSURES AND THUS THROW OUR WHOLE SYSTEM OF LAND MANAGEMENT INTO CHAOS.

THE U.S. SUPREME COURT, ON THE OTHER HAND, HAS UPHELD THAT
.. "IF THE LAND IS WORTH MORE FOR AGRICULTURE THAN MINING, IT
IS NOT MINERAL LAND, ALTHOUGH IT MAY CONTAIN SOME MEASURE OF
GOLD OR SILVER." I SUSPECT THIS WOULD ALSO BE TRUE OF OUR
STATE PARKS. THE IMPORTANT POINT HOWEVER, IS IF WE ADOPT A
SYSTEM LIKE THAT IN SB 161, AS THE STATE SUPREME COURT HAS
DIRECTED US TO DO, WE DO NOT HAVE TO WORRY ABOUT LITIGATION
THAT WILL INVALIDATE STATE MINERAL CLOSING ORDERS.

THIS CONCLUDES MY REMARKS MADAM CHAIRMAN.

Senator John B. (Jack) Coghill

Alaska State Legislature

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MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chair

From: Senator Jack Coghill

Re: 6(i) and the issue of Reclamation

Date: February 28, 1989

A handwritten signature in black ink, appearing to read "Jack Coghill", written over the "Re:" line of the memorandum.

There is a perception in the halls of the capitol that reclamation will continue to be linked to resolution of 6(i). You know of my position that this is a disservice to the industry, because it removes the focus from setting fair rent and royalty rates. You have also expressed like sentiments. So I have three suggestions if you are to use the Governors bill (SB 129) as the vehicle.

1. Add at line 23 (SB 129); The primary use of land covered by a mining lease is the extraction of minerals.
2. If a reclamation clause is to be tacked on to the bill, it should also include the direction that patenting of the surface will be part of the reclamation bill.
3. Since we will be going outside the preview of rents and royalties by tacking on reclamation, I would suggest you address the inequities of the interior river fisheries in the next fish tax or enhancement bill before the committee, by requiring the development of an individual quota system for fishermen.

I believe that Suggestion 1 and 2 are self-explanatory, as they are peripheral to the issue of reclamation. However I have also supplied in this memo the rational for Suggestion 3.

Rational for Suggestion 3.

The interior river fisheries are presently being managed as if the purpose of every fish entering the system was spawning. This does not allow for the beneficial use of the river fisheries by rural river residents use in developing a cash economy. Presently, allocation of the resource is such that over fishing in the coastal intercept fisheries, results in very brief commercial fisheries if any are allowed at all. It

is also evident that the species which have the highest commercial value in the interior river systems, are impacted primarily as a result of "bycatch" overfishing.

Bycatch, as you know, is the harvesting of fish species incidental to fishing a different species. For instance, the bycatch for a coho or King salmon opening in Bristol Bay or the Beings Sea, is chum salmon, bound for the Yukon and Tanana Rivers.

A quota system would better allocate the benefits of our fish resources, among users, and eliminate over fishing when run strengths are perceived to be high in coastal waters.

Background for Suggestion 3.

There is a political and policy similarity between appropriate levels of Reclamation and Bycatch. Both present a contentious management issue in 3 basic ways:

1. In the case of bycatch of a species in one fishery, this may reduce the amount of that species that can be taken in the fishery that targets on it.

In the case of reclamation, a particular mine site is considered to have reduced the amount of land area, natural or otherwise, that can be utilized by other activities. Reclamation then must be at a level that targets these other land uses.

2. With bycatch, a fishery may not be able to control it's bycatch level, without using less productive or more costly fishing techniques.

With reclamation, a mine may not be able to perform reclamation without reducing the potential to mine marginally economic ore zones or employing reclamation schedules that jeopardize the mines economic viability.

3. Presently there is not a mechanism in place that tends to assure bycatch levels will be controlled to the appropriate management levels automatically.

However, there is a mechanism in place that assures reclamation at this time. The mechanism is the permit process where each individual mine is given reclamation stipulations.

The question that seems to be raised by the present discussions is whether or not the reclamation levels stipulated in permits are at the appropriate level to restore what ever the targeted future uses might be.

The answer to the appropriate bycatch level then, seems to be the institutionalization of individual fish quotas.

There are two assumptions we can make in both issues of appropriate bycatch levels, and appropriate reclamation levels. First the levels can be determined through a political process prior to the activity or secondarily, the levels can be determined by a market process during the activity.

From these assumptions we can recognize that the appropriate level for one bycatch species, or the reclamation of one mine site, is probably not independent of those of other bycatch species, or independent of reclamation of mines in other regions of the state.

We can also see that the concept of "bycatch needs" is so poorly defined that it could be counter productive in discussions focused on related fishery issues. The same can be said of the concept of "reclamation needs", being counter productive to discussions which should be focused on the related issue of rents and/or royalties.

In closing I will take this opportunity to remind those you might circulate this memo to, that the value of our natural resources depends on the rules that govern their use. These rules may be either formal laws and regulation of government or informal cultural rules of a particular user group.

This "value concept" is true whether you interpret value as economic benefits provided to society, a particular allocative distribution of benefits, or the achievement of a particular intangible cultural or conservation ethic.

I believe that so long as we are going to start using coercive tactics to impart additional rules on a particular user group, in order to give other user groups a perceived advantage or benefit, we should employ this process on other allocative resources.

Thank you for your consideration of this lengthy memorandum.

1. 10/6/88 ... Alaska ...
Smooth - Obst not High!
Hard Rock & minerals

SUSAN KNAPMAN, PRESIDENT OF CIRCLE MINING AND RECORDING DISTRICT. WINTER ADDRESS 1215 CHOCTAW NORTH POLE, ALASKA, MAILING ADDRESS PO BOX 1273 FAIRBANKS AK 99707.

AN EQUALITIBLE AND LEGALLY ACCEPTABLE SOLUTION TO THE 6 (1) ISSUE IS OF GREAT IMPORTANCE TO THE CONTINUED WELFARE OF THE MINERS, THEIR FAMILIES, EMPLOYEES AND THE POEPLER WHO MAKE A LIVING FROM THE SPIN OFFS OF MINING IN THE CIRCLE MINING AND RECORDING DISTRICT. THIS AREA HAS SEEN CONINUED MINING SINCE 1893 ACCEPT FOR A SHORT TIME DURING WW II. THE PEOPLE WHO BENEFIT FROM MINING IS THIS AREA LIVE IN CIRCLE, CENTRAL, FAIRBANKS AND EVEN AS FAR SOUTH AS ANCHORAGE.

LISTENING TO THE ADM PESENTATION OF 6 (1) I FIND THAT IN SOME REMARKS THEY APPEAR TO TAKE A MIDDLE OF THE ROAD APPROACH. IN OTHER REMARKS THEY GO FAR BEYOND WHAT WAS REQUIRED IN THE DECISION FROM THE STATE SUPREME COURT.

I AM SURE ALL OF YOU STATEMEN AND STATEWOMEN REALIZE THAT THERE ISN'T A PIECE OF LEGISLATION THAT CAN BE DRAFTED THAT IS LITIGATION PROOF--EVEN THE STATE'S LAWYER SO INFERRED IN THE HEARINGS.

SO PERHAPS THIS IDEA SHOULD NOT BE A STRONG POINT IN REACHING A JUST AND FAIR DECISION ON HOW TO MEET THE REQUIREMENTS LAID OUT BY THE COURT DECISION.

129

SB 126 AND HB 99 WHICH ARE COMPANION BILLS APPEAR TO HAVE A FEW FLAWS.

F I R S T

FIRST IT HAS NEVER BEEN STATED THAT 6 (1) LANDS MUST BE CHARGE RENTS AND ROYALTIES. THE COURT DECISION SAID RENTS AND OR ROYALTIES. YOU HAVE BEEN SOLD A CONCEPT BY THE ADM THAT IF RENTS AND ROYALTIES ARE PASSED ON IN THIS LEGISLATION YOU MAY (NO GUARENTEE) SAVE FURTHER LITIGATION ON 6 (1).

I REALY WOULD NOT WANT TO HAND MY HAT ON THAT CONCEPT FOR LONG.

S E C O N D

SECOND POINT I WOULD CALL YOUR ATTENTION TO A VERY CONFUSING TECHNICAL ERROR.

PAGE 1 LINE 13 IN REFERENCE TO AS 38.05.20 (c) THE (c` SHOULD BE BRACKETTED AND THE (b) UNDERLINDED

AND

YOU SHOULD FIRST REPEAL A SECTION BEFORE YOU ADMEND IT AND IF SO THE REFERENCE SHOULD BE CLOSE TOGETHER NOT SCATTERED THROUGHOUT THE BILL AS AN AFTER THOUGHT.

PLEASE REFER TO PAGE 6 LINE 12 SEC 7.

IT SHOULD BE MOVED UP IN THE BILL AND BE PUT IN AS SEC 1

AND THEN THE CURRENT SEC 1 WOULD BECOME SEC 2.

THIS CHANGE WOULD BRING THE BILL INTO CONSECUTIVE ORDER AND SAVE A LOT OF CONCERN THAT YOU MIGHT POSSIBLE PASS ON A BILL THAT HAS NOT CLEARED ALL AFFECTED STATES . THIS IS ONLY A SLIGHT TECHNICAL ERROR WHICH I AM SURE CAN BE LOCKED INTO .

T H I R D

THIRD. LET'S GO TO PAGE 3 AND SEE HOW THAT COMES OUT FOR THE MINER WHO BY THE WAY DOESN'T MIND PAYING A FAIR AMMOUNT BUT LIKE EVERYONE IN THIS ROOM RESENTS REAL GOUGING TACTICS.

I CAN ADD THAT WHEN YOU START IN THE MIDDLE YOU NEVER NEVER GO DOWN. (REMEMBER THE 5 NTU ISSUE). I FIND IT VERY INTERESTING THAT MR. GALLAGER THINKS A MINING PLACER CLAIM REALLY ONLY CONTAINS 40 ACRES OR THAT MINER/ OPERATORS WORKING A CLAIM ONLY HAVE TO WORRY ABOUT 40 ACRES. HE NEEDS TO CHECK HIS FILES. PERPHAPS A BETTER STATEMENT WOULD BE THAT GOOD SHARE OF CLAIMS ON WHICH MINING OCCURS CAN CONSIST OF FROM 2 TO 10 CLAIMS. THEN THE MULTIPLIER TAKES ON A DIFFERENT PICTURE.

I ALSO HAVE A HARD TIME UNDERSTANDING WHY ALASKA HAS TO BE THE "BIG GUY" AND DOUBLE THE RECOMMENDED FEE THE FEDERAL GOVERNMENT HAS PROMOGATED. PLEASE. I WOULD ASK THAT YOU TAKE THE TIME TO CHECK THIS OUT.

REMEMBER IT IS HUMAN NATURE TO REACH UP NOT TO GO BACK AS OUR STATE BUDGET IN THE PAST SEVERAL YEARS HAVE DEMOSTRATED.

F O U R T H

FOURTH, LET'S JUMP OVER TO PAGE 4 AND CHECK ON THIS ROYALTY PAYMENT.

1. IT COULD BE TAKEN AS A DOUBLE TAX SINCE WE STILL PAY A PRODUCTION TAX WHICH HASN'T BEEN REPELLED.

2. SMALL (c) ON LINE 15 IS WAY BEYOND THE SCOPE OF THE 6 (i) LAWSUIT AND ONLY SHOW TOTAL IGNORANCE ON THE PART OF ADM FOR TRYING TO PUT THIS IN. I AM SURE ALL OF YOU IF YOU READ THIS THOUGH CAN RECOGNIZE IF FOR WHAT IT IS. A VERY UNNECESSARY DEMANDING ESCALATINGG LEASE CLAUSE--MOST PRIVATE COMPANIES TRY THIS BUT SELDOM ACCOMPLISH IT.

F I F T H

I WOULD TAKE ARGUEMENT WITH MR. GALLAGER'S (i) ADM STAND ON THE MINERAL IN CHARACTER ISSUE WHICH HAS BEEN TOTAL ABDOCATED FROM THE BILL. I WOULD BE REMISS IF I DIDN'T ASK WHY A TERM SO JUSTLY WON IN COURT AND DEFINED IN VARIOUS DOCUMENTS HAS BEEN TOTALLY IGNORED BY THE ADM IN THEIR BILL.

MY RECOMMENDATION AT THIS TIME IS A REWRITE OF BOTH BILLS WITH THE TECHNICAL QUESTIONS ADDRESSED AND ALSO AGAIN GO OVER THE SCOPE OF 6 (i) AND STAY WITHIN THE PARAMETERS LAYED OUT BY THE COURT DECISION.

TRYING TO FORM A COMPROMISE BILL IN ORDER TO AVOID LITIAGTION CAN ONLY GENERATE MORE LITIAGION AND WE CERTAINLY HAVE ENOUGH AS IT IS.

I WOULD ASK THAT YOU AS STATESMEN AND STATESWOMEN WEIGHT CAREFULLY WHO WINS AND WHO LOSES INSTEAD OF WHO PAYS AND HOW MUCH. THE PRICE MAY BE GREATER THAN YOU IMAGINE. A HEALTHY PROSPEROUS WORKING ECONOMY MUST BE MAINTAIN IN THIS STATE . THESE BILLS AS PRESENTED COULD ADD TO THE DECLINE OF THIS ECONOMIC ATMOSPHERE.

THANK YOU.



Northern Alaska Environmental Center

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(907) 452 5021

TESTIMONY OF REX BLAZER, EXECUTIVE DIRECTOR OF THE
NORTHERN ALASKA ENVIRONMENTAL CENTER, BEFORE THE SENATE
NATURAL RESOURCES COMMITTEE
JANUARY 30, 1989.

The State Supreme Court has determined that the State must collect rents and royalties from mining claims on State land under Section 6(i) of the Alaska Statehood Act. The U.S. Solicitor General has recommended that these lease payments apply to all State lands, not only those found to be mineral in character at the time of statehood. The opinion further held that the Federal Courts, rather than the State Court, had the ultimate jurisdiction over the issue. Rents discourage speculation and encourage efficient use of public resources. Royalties pay the people of the State for the extraction of non-renewable resources, as is done with coal, oil, and gas.

The legislature must determine how this is to be done. There is a possibility that mining on State lands for the 1989 season might be severely curtailed if adequate legislation does not pass this session. The State Division of Mining under Gerald Gallagher prepared these bills which were introduced by the Rules Committees for the Governor.

The legislation applies to all state lands and charges annual rents on a sliding scale from \$.50 per acre (\$20.00/claim) for the first five years to \$5.00 per acre (\$200.00/claim) after twenty-one years. Production Royalties will be assessed as a sliding scale percentage of net income or a minimum royalty based on gross income, whichever is higher. The state gives a break to the miners in that the annual labor requirement will be reduced from \$200.00 to \$100.00.

The major positive aspects of this bill are that the state will apply both rents and royalties to all state lands. Furthermore, revenues would help defray the cumulative costs to the state of regulating this industry. The negative aspects are that the bill does not go far enough. The bill does not insure an adequate basis for the condition in which state lands will be returned to the people of the state - hence no basis of foregone uses from which to calculate fair royalty.

The Northern Alaska Environmental Center opposes this bill as it is written and strongly supports the following amendments.

