

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 155

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY SENATOR BISHOP

Introduced: 2/3/20

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to exploration and mining rights; relating to annual labor
2 requirements with respect to mining claims and related leases; relating to statements of
3 annual labor; defining 'labor'; and providing for an effective date."

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

5 * **Section 1.** AS 38.05.190(a) is amended to read:

6 (a) **Except as provided in (b) of this section,** [THE RIGHT TO ACQUIRE]
7 exploration and mining rights under AS 38.05.185 - 38.05.275 may be acquired or
8 held only by

9 (1) citizens of the United States at least 18 years of age;

10 (2) legal guardians, **conservators,** or trustees of citizens of the United
11 States under 18 years of age **or citizens of the United States that are incapacitated**
12 **adults under AS 13.26** on behalf of the citizens;

13 (3) **individuals** [PERSONS] at least 18 years of age who have
14 declared their intention to become citizens of the United States;

(4) aliens at least 18 years of age if the laws of their country grant like privileges to citizens of the United States;

(5) corporations, limited liability companies, or other entities that are organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state;

(6) trusts that are registered in this state under AS 13.36 and for which at least one trustee is a person described in (1) - (5) of this subsection; or

(7) [(6)] associations of persons described in (1) - (6) [(1) - (5)] of this subsection.

* **Sec. 2.** AS 38.05.190(b) is repealed and reenacted to read:

(b) An unqualified person who acquires an interest in exploration or mining rights by conveyance or operation of law, or a person who was qualified under (a) of this section at the time of location or acquisition of exploration and mining rights and later becomes unqualified, may either become qualified or transfer the interest to a qualified person within 90 days from the date the department sends written notice under (c) of this section. If the unqualified person does not cure the defect or transfer the interest to a qualified person, the department may declare the interest void under (d) of this section.

* **Sec. 3.** AS 38.05.190 is amended by adding new subsections to read:

(c) If the department learns that an unqualified person has acquired an interest in exploration or mining rights through conveyance or operation of law, the department shall send written notice to the owner and address listed in the most recent statement of annual labor filed under AS 38.05.210(b) or to the address in the deed or assignment of the claim, stating that the interest will be void if the unqualified person does not cure the defect or transfer the interest.

(d) The department may declare void the exploration or mining interest of a person who fails to comply with (b) of this section but may not declare the interest void if the person becomes qualified under (e) of this section.

(e) An unqualified person may cure a defect in qualification, before or after receiving notice under (c) of this section, by becoming qualified or transferring the person's interest to a qualified person. A person may not cure a defect in qualification

1 for an exploration or mining interest that has been declared void under (d) of this
2 section.

3 (f) If an unqualified person fails to cure a defect in qualification within 90
4 days after the department sends written notice under (b) of this section, the department
5 may declare the exploration or mining interest void and the affected land becomes
6 open to location. A third party may not locate on the affected land or file a judicial
7 action to declare the exploration or mining interest invalid within those 90 days.

8 (g) In this section, "qualified to do business in this state" means holding a
9 certificate issued by the commissioner of commerce, community, and economic
10 development necessary to conduct business in the state.

11 * **Sec. 4.** AS 38.05.195(b) is amended to read:

12 (b) The locator may locate a claim using one of the following methods:

13 (1) a locator may locate a claim based on the ground location of a
14 [COMPLETE] quarter section or quarter-quarter section of a township on a
15 rectangular survey system approved by the commissioner; a claim established in this
16 manner may be known as a [THE] meridian, township, range, section, and claim
17 system location, or MTRSC location; a locator using the MTRSC system to locate a
18 claim shall in good faith mark the corners of a location as closely as practical to the
19 existing quarter section or quarter-quarter section of the rectangular survey system
20 approved by the commissioner; the corners marked on the ground of a claim
21 established in accordance with this paragraph and regulations of the commissioner
22 control in the event of a conflict over boundaries for the quarter section or quarter-
23 quarter section on the protracted or actual survey approved by the commissioner; a
24 valid MTRSC location establishes rights to deposits of minerals in or on all state
25 lands within the quarter section or quarter-quarter section that are open to claim
26 staking at the time of location; or

27 (2) a locator may locate a claim based on the staking of a ground
28 location in which the claim may not exceed 1,320 feet in its longest dimension; the
29 boundaries of a claim based on staking and located after January 1, 1985, shall run in
30 the four cardinal directions unless the claim is a fractional claim or the commissioner
31 determines that staking in compliance with this paragraph is impractical because of

1 local topography or because of the location of other claims; a claim established in this
2 manner may be known as a non-MTRSC location.

3 * **Sec. 5.** AS 38.05.195(d) is amended to read:

4 (d) Locations may be amended in the manner and with the effect prescribed in
5 AS 38.05.200. [ANNUAL LABOR SHALL BE PERFORMED AND STATEMENTS
6 OF ANNUAL LABOR RECORDED AS PRESCRIBED IN AS 38.05.210 -
7 38.05.235.]

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

9 (a) Labor shall be performed or improvements made annually on or for the
10 benefit or development of each mining claim, leasehold location, and mining lease on
11 state land except that, where adjacent claims, leasehold locations, or mining leases are
12 held in common **and are being developed or operated under a common plan of**
13 **development, either alone or with adjacent mineral interests**, the expenditure may
14 be made on **or for the benefit of** any one claim, leasehold location, or mining lease.
15 The commissioner shall establish the date of the commencement of the year during
16 which the labor or improvements are to be performed. Labor shall be performed at the
17 following annual rates: (1) \$100 **for each** [PER] claim, leasehold location, or lease if
18 the claim, leasehold location, or lease is a quarter-quarter section MTRSC claim,
19 leasehold location, or lease; (2) \$400 for each quarter section MTRSC claim,
20 leasehold location, or lease; and (3) \$100 for each partial or whole 40 acres of each
21 mining claim, leasehold location, or lease not established using the MTRSC system. If
22 more work is performed than is required by this section to be performed in any one
23 year, the excess value may be applied against labor required to be done during the
24 subsequent year or years, for as many as four years. **For not more than five**
25 **consecutive years, instead** [INSTEAD] of performing annual labor, the holder of a
26 claim, leasehold location, or mining lease may make a cash payment to the state equal
27 to the value of the labor required by this subsection.

28 * **Sec. 7.** AS 38.05.210(b) is amended to read:

29 (b) During the year in which annual labor is required or within 90 days after
30 the close of that year, the owner of the mining claim, leasehold location, or mining
31 lease, or some other person having knowledge of the facts, shall record with the

recorder of the district in which the claim, leasehold location, or mining lease is located a signed statement of annual labor. The individual who signs the statement shall certify that, to the best of the individual's knowledge, the information contained in the statement is true and correct. The statement must include [SETTING OUT] the following information:

(1) the assessment work year for which the statement is being recorded;

(2) the name of and land administration number assigned by the department for each mining claim, leasehold location, or mining lease benefited by the labor;

(3) each meridian, township, range, and section in which a mining claim, leasehold location, or mining lease is located;

(4) the recording district in which the mining claim, leasehold location, or mining lease is located;

(5) the total amount of work required for the assessment work year for a mining claim, leasehold location, or mining lease described in the statement;

(6) a description of the labor performed during the assessment work year;

(7) the value of

(A) the labor performed during the assessment work year;

(B) any excess labor value from a previous year applied against the labor required; or

(C) any cash payment to the state equal to the value of the annual labor required under (a) of this section;

(8) the name and mailing address of an owner designated to receive notices regarding a mining claim, leasehold location, or mining lease [, AS MAY BE REQUIRED BY THE COMMISSIONER, CONCERNING THE ANNUAL LABOR OF THE PRECEDING YEAR, ANY LABOR IN EXCESS OF THAT REQUIRED FOR THE PRECEDING YEAR, AND ANY PAYMENT OF CASH INSTEAD OF ANNUAL LABOR. THE STATEMENT, PROPERLY RECORDED,

1 IS PRIMA FACIE EVIDENCE OF THE PERFORMANCE OF THE LABOR. THE
 2 FAILURE OF ONE OF SEVERAL CO-OWNERS TO CONTRIBUTE THE
 3 PROPORTION OF THE EXPENDITURES REQUIRED FOR ANNUAL LABOR
 4 FROM THE CO-OWNER SHALL BE TREATED IN ACCORDANCE WITH
 5 AS 38.05.215 - 38.05.235].

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

7 (c) The statement of annual labor required in (b) of this section, whether
 8 recorded before or after the effective date of this Act, may be corrected or
 9 amended at any time before the department declares a mining claim or leasehold
 10 location invalid. A corrected or [WITHIN TWO YEARS OF THE DATE BY
 11 WHICH THE ANNUAL LABOR STATEMENT WAS REQUIRED TO BE
 12 RECORDED. AN] amended statement of annual labor shall be recorded [FOR
 13 RECORD] in the same manner as the original statement. Additional labor claimed in a
 14 corrected or [AN] amended statement may not be applied against labor required to be
 15 done during a subsequent year. A corrected statement following notice of deficiency
 16 under (g) of this section shall be recorded within 90 days after the notice is sent.

17 * **Sec. 9.** AS 38.05.210 is amended by adding new subsections to read:

18 (e) A single statement of annual labor may be recorded for labor performed on
 19 or for the benefit of more than one mining claim, leasehold location, or mining lease.

20 (f) A statement of annual labor, timely recorded, is prima facie evidence of the
 21 performance of the labor.

22 (g) The department may not declare a mining claim or leasehold location
 23 invalid based on a deficiency in a statement of annual labor until 90 days after the date
 24 the department sends written notice regarding a deficiency in the statement to the
 25 owner of the mining claim or leasehold location by certified mail, return receipt
 26 requested, to the most recent address on file with the department. The department shall
 27 send an additional copy of the notice by regular mail.

28 (h) If a person fails to correct a deficient statement of annual labor within 90
 29 days after notice is sent under (g) of this section, the department may declare the
 30 mining claim or leasehold location invalid and the affected land becomes open to
 31 location. A third party may not locate on the affected land or file a judicial action to

1 declare the mining claim or leasehold location invalid within those 90 days.

2 (i) The department may not declare a mining claim, leasehold location, or
3 mining lease invalid based on a deficiency in a statement of annual labor, or a judicial
4 action seeking invalidation as the result of a deficiency in a statement of annual labor,
5 later than five years after the date the deficient statement of annual labor is recorded.

6 (j) Prior to an allegation of a deficiency in a statement of annual labor, the
7 department is not required to review whether a statement of annual labor meets the
8 requirements in (b) of this section or regulations adopted by the department to
9 implement this chapter.

10 (k) The failure of one of several co-owners to contribute the proportion of the
11 expenditures required for annual labor from the co-owner shall be treated in
12 accordance with AS 38.05.215 - 38.05.235.

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

14 **Sec. 38.05.240. Labor defined for AS 38.05.210 - 38.05.235.** In AS 38.05.210
15 - 38.05.235, "labor" includes work performed or improvements made in good faith
16 on or for the benefit of a mining claim, leasehold location, or mining lease that is
17 directly related to prospecting for, developing, or producing minerals, including

18 (1) excavating, tunneling, drilling, or clearing land in support of
19 prospecting for, developing, or producing minerals;

20 (2) constructing or maintaining roads, trails, or landing strips;

21 (3) extracting or producing ore;

22 (4) performing a metallurgical analysis, an environmental study,
23 or an economic feasibility study, or conducting engineering or permitting
24 activity;

25 (5) constructing settling ponds, water supplies, or other utilities;

26 (6) providing worker housing;

27 (7) performing reclamation activities under a reclamation plan
28 approved under AS 27.19.030;

29 (8) transporting workers and equipment in the state to or from a
30 mining site; the claimed value of transportation under this subparagraph may
31 not exceed 50 percent of the total value of labor in a statement of annual labor

1 **recorded under AS 38.05.210(b) for the assessment year;**

2 **(9) conducting a** geological, geochemical, geophysical, **or** [AND]
3 airborne **survey** [SURVEYS CONDUCTED] by **a** qualified **expert** [EXPERTS] and
4 verified by a [DETAILED] report filed in the recording district office in which the
5 claim, leasehold location, or mining lease is located **that** [WHICH] sets out

6 **(A)** [FULLY (1)] the location of the **survey** [WORK
7 PERFORMED] in relation to the [POINT OF DISCOVERY AND] boundaries
8 of the claim, leasehold location, or mining lease;

9 **(B)** [, (2)] the nature, extent, and cost of **the survey;** [IT,] and

10 **(C)** [(3)] the name, address, and professional background of the
11 person conducting the work; **the** [. THE] commissioner, by regulation, shall
12 define the nature of acceptable survey work and the qualifications of a person
13 competent to perform **the** [THIS] work; **an** [. THE] airborne **survey**
14 **conducted under this paragraph** [SURVEYS, HOWEVER, MAY NOT BE
15 APPLIED AS LABOR FOR MORE THAN TWO CONSECUTIVE YEARS
16 OR FOR MORE THAN A TOTAL OF FIVE YEARS ON ANY ONE
17 MINING CLAIM, LEASEHOLD LOCATION, OR MINING LEASE, AND
18 EACH OF THOSE SURVEYS] shall be nonrepetitive of any previous survey
19 on the same claim, leasehold location, or mining lease.

20 * **Sec. 11.** AS 38.05.265 is amended to read:

21 **Sec. 38.05.265. Abandonment.** (a) Failure to **perform the labor or make**
22 **improvements or make a payment in lieu of labor under AS 38.05.210(a), timely**
23 [PROPERLY] record a certificate of location or [A] statement of annual labor, **timely**
24 pay any required annual rental, or **timely** pay any required production royalty **under**
25 **AS 38.05.212** [AS REQUIRED BY AS 38.05.185 - 38.05.200, 38.05.210 - 38.05.245,
26 38.05.252 - 38.05.275, AND BY REGULATIONS ADOPTED UNDER THESE
27 SECTIONS] constitutes abandonment of all rights acquired under the mining claim,
28 leasehold location, or prospecting site involved, and the claim, leasehold location, or
29 prospecting site is subject to relocation by others, unless the failure constituting the
30 abandonment is cured under (b) of this section. A locator or claimant of an abandoned
31 location or a successor in interest may not relocate the claim, leasehold location, or

1 prospecting site until one year after abandonment. The locator of an abandoned
 2 prospecting site may locate a claim or leasehold location on that site at any time. [A
 3 STATEMENT OF ANNUAL LABOR THAT DOES NOT ACCURATELY SET
 4 OUT THE ESSENTIAL FACTS IS VOID AND OF NO EFFECT.] If an annual rental
 5 or a royalty payment is deficient but is otherwise timely paid, abandonment does not
 6 result if full payment is made within

7 (1) the period prescribed by a deficiency notice from the **department**
 8 [COMMISSIONER]; or

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

11 (b) Unless another person has located a mining claim or leasehold location
 12 that includes all or part of the mining claim or leasehold location abandoned under (a)
 13 of this section or the area is closed to mineral location under AS 38.05.185 -
 14 38.05.275, a person may cure the failure to record or pay **rents or royalties** that
 15 constituted the abandonment and cure the abandonment by

16 (1) properly recording a certificate of location or a statement of annual
 17 labor, paying any required annual rental, and paying any required production royalty;
 18 and

19 (2) paying a penalty equal to the annual rent for the mining claim or
 20 leasehold location that was abandoned under (a) of this section.

21 * **Sec. 12.** AS 38.05.270 is amended to read:

22 **Sec. 38.05.270. Transfers.** The sale, lease, or other transfer of mining property
 23 or interest in mining property shall be recorded [OR SHALL BE APPROVED BY
 24 THE DIRECTOR IN COMPLIANCE WITH SUCH REGULATIONS AS THE
 25 COMMISSIONER MAY ADOPT]. The heirs and assigns of mining property or
 26 interest in mining property have the same rights and duties as their predecessors.

27 * **Sec. 13.** AS 38.05.275(a) is amended to read:

28 (a) Mining locations made on state land, including shoreland, tideland, or
 29 submerged land, or state selected land, under AS 38.05.185 - 38.05.275 or in the
 30 manner described in AS 27.10, acquire for the locator mining rights under
 31 AS 38.05.185 - 38.05.275, subject to existing claims and to any denial of or restriction

in the tentative approval of state selection or patent of the land to the state. If shoreland, tideland, or submerged land is included in a mining location or within the projected boundaries of a mining location made in accordance with this section, the locator shall record a certificate of location under AS 38.05.195. The certificate of location must identify the position of the mining location in the system of rectangular or protracted surveys. If the mining location is made in the manner described in AS 27.10, the commissioner may require that the locator amend the mining location to conform with AS 38.05.185 - 38.05.275 and thereafter to comply with the requirements of AS 38.05.185 - 38.05.275. **A mining location on state selected land located within an active unpatented federal mining claim may be located only by or with the written and recorded permission of the holder of the unpatented federal mining claim.**

* **Sec. 14.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 38.05.210(c), as amended by sec. 8 of this Act, applies to statements of annual labor filed before, on, or after the effective date of this Act.

(b) AS 38.05.210(e) - (i), enacted by sec. 9 of this Act, apply to all pending claims or actions filed before, on, or after the effective date of this Act.

(c) AS 38.05.275(a), as amended by sec. 13 of this Act, applies to mining locations made on state selected land on or after July 1, 2020.

* **Sec. 15.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION. Until the Department of Natural Resources adopts regulations consistent with the changes made in this Act, the Department of Natural Resources may not declare a mining claim, leasehold location, or prospecting site abandoned under AS 38.05.265, as amended by sec. 11 of this Act, on the basis that a statement of annual labor fails to include the information required by AS 38.05.210, as amended by secs. 6 - 9 of this Act.

* **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).