

CS FOR HOUSE BILL NO. 185(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/6/01

Referred: Today's Calendar

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees for certain uses of state water, other than fees for traveling upon**
2 **state water, and to the accounting and appropriation of those fees; relating to**
3 **authorizations for the temporary use of state water; making other amendments to the**
4 **Alaska Water Use Act; and providing for an effective date."**

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

6 * **Section 1.** The uncoded law of the State of Alaska is amended by adding new sections
7 to read:

8 POLICY REGARDING STATE WATER USE FEES. (a) It is the policy of
9 the legislature to authorize the Department of Natural Resources to assess a reasonable fee for
10 the services it provides in facilitating the use of state water; the fee should reflect the
11 reasonable direct cost of providing the service, but it is the policy of the state that the fee not
12 include

13 (1) the costs and salaries of administrative, support, or supervisory personnel
14 who are not directly engaged in providing the service;

- 1 (2) other budgeted overhead expenses, including rent and utilities;
- 2 (3) interagency charges that would not meet the requirements of AS 37.10.052
- 3 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
- 4 designated regulatory service;
- 5 (4) public consultation costs when the consultation is not required by law;
- 6 (5) costs related to an appeal of permit issuance by a person other than the
- 7 applicant for that permit;
- 8 (6) expenses that are not reasonably necessary to comply with the law under
- 9 which the service is provided; or
- 10 (7) travel expenses for inspecting businesses having not more than 20
- 11 employees.

12 (b) It is the policy of the legislature that the Department of Natural Resources not
 13 apply a charge to the holder of a certificate of appropriation that is not specifically related to
 14 services provided by the department, except that the department may continue to charge the
 15 annual \$50 administrative service fee currently in use by the department in order to maintain
 16 the water rights program for the benefit of Alaskans and current water rights holders.

17 (c) It is the policy of the legislature that the Department of Natural Resources

18 (1) minimize the required costs, including application fees, on individuals and
 19 businesses withdrawing less than a significant amount of water;

20 (2) consider providing a partial fee reduction for water rights holders and
 21 applicants who have approved irrigation management plans.

22 * **Sec. 2.** The uncoded law of the State of Alaska is amended by adding a new section to
 23 read:

24 FINDINGS, POLICY, AND PURPOSE RELATED TO AUTHORIZATIONS FOR
 25 CERTAIN TEMPORARY USES OF STATE WATER. (a) The legislature finds that

26 (1) many construction, development, commercial, and private activities
 27 require an authorization for the temporary use of the state's water without the need to acquire
 28 a permanent right to appropriate water;

29 (2) for many years, in appropriate circumstances, the Department of Natural
 30 Resources has issued revocable permits for the temporary use of state water under AS 46.15;
 31 and

(3) the legislature validates and affirms that temporary permits authorizing the temporary use of state water continue to be appropriate under AS 46.15.

(b) It is the policy of the legislature to expressly confirm in the Department of Natural Resources the authority to issue authorizations for temporary use of water subject to appropriate conditions and limitations set by the Department of Natural Resources.

(c) The purpose of the enactment of AS 46.15.155 in sec. 6 of this Act is to

(1) confirm the authority of the Department of Natural Resources to issue authorizations for temporary use of water; and

(2) affirm the validity of existing temporary permits for the use of state water issued before the effective date of this Act that may have been called into question by the rationale used by the court in *Greenpeace v. Alaska Department of Natural Resources*, 3AN-00-3415 Civil.

* **Sec. 3.** AS 37.10.058(2) is amended to read:

(2) "designated regulatory service" means a regulatory service provided under the following regulatory programs:

(A) regulation of the disposal of waste into waters of the state under AS 46.03.100;

(B) certification of federal permits or authorizations under 33 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

(C) a coastal management consistency determination relating to a permit or authorization issued under a program listed in (A) or (B) of this paragraph, if the determination is made by the agency issuing the permit or authorization; **and**

(D) any authorization for the use or appropriation of water under AS 46.15.

* **Sec. 4.** AS 46.15.020(b) is amended to read:

(b) The commissioner shall

(1) adopt procedural and substantive regulations to carry out the provisions of this chapter, taking into consideration the responsibilities of the Department of Environmental Conservation under AS 46.03 and the Department of Fish and Game under AS 16;

(2) keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; and shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator;

(3) cooperate with, assist, advise, and coordinate plans with the federal, state, and local agencies, including local soil and water conservation districts, in matters relating to the appropriation, use, conservation, quality, disposal, or control of waters and activities related thereto;

(4) prescribe fees or service charges for any public service rendered consistent with AS 37.10.050 - 37.10.058, except that the department may charge under regulations adopted by the department an annual \$50 administrative service fee to maintain the water management program and a water conservation fee under AS 46.15.035;

(5) before February 1 of each year, prepare a report describing the activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner shall notify the legislature that the report is available; the report must include

(A) information on the number of applications and appropriations for the removal of water from one hydrological unit to another that were requested and that were granted and on the amounts of water involved;

(B) information on the number and location of sales of water conducted by the commissioner and on the volume of water sold;

(C) recommendations of the commissioner for changes in state water law; and

(D) a description of state revenue and expenses related to activities under AS 46.15.035 and 46.15.037.

* **Sec. 5.** AS 46.15.035(e)(2) is amended to read:

(2) "hydrologic unit" means a hydrologic subregion established by the United States Department of the Interior, Geological Survey, on the "Hydrologic Unit Map-1987, State of Alaska"; "hydrologic unit" includes the water of an ocean that is adjacent to a hydrologic subregion of the state. ["

1 * **Sec. 6.** AS 46.15 is amended by adding a new section to read:

2 **Sec. 46.15.155. Authorization for temporary use of water. (a)**

3 Notwithstanding any contrary provision of this chapter, the commissioner may
4 authorize the temporary use of a significant amount of water, as determined by the
5 department by regulation, for a period of time not to exceed five consecutive years, if
6 the water applied for has not been appropriated in accordance with this chapter.

7 (b) Notwithstanding any contrary provision of this chapter, an authorization
8 for a temporary use of less than a significant amount of water is not required under
9 this section unless the commissioner has determined by regulation that the use may
10 have an adverse effect on other water uses and that an authorization must be obtained
11 from the department.

12 (c) The issuance of an authorization for temporary use of water under this
13 section does not establish a right to appropriate water. The temporary use of water
14 under an authorization remains subject to appropriation under this chapter.

15 (d) Notwithstanding any contrary provision of this chapter, the commissioner
16 is not required to provide public notice under AS 46.15.133 of a proposed
17 authorization for temporary use of water; however, the commissioner shall request
18 comment on an application for temporary use of water from the Department of Fish
19 and Game and the Department of Environmental Conservation.

20 (e) The provisions of AS 46.15.080 do not apply to the issuance under this
21 section of an authorization for temporary use of water.

22 (f) The commissioner may impose reasonable conditions or limitations on an
23 authorization for temporary use of water to protect the water rights of other persons or
24 to protect fish and wildlife habitat, human health, or other public interests.

25 (g) Upon approval by the department, an authorization under this section may
26 be transferred to another person under the same conditions and limitations under
27 which the authorization was issued.

28 (h) A person to whom an authorization for temporary use of water was issued
29 under this section may allow another person to use the authorization, consistent with
30 the conditions and limitations of the authorization.

31 (i) The commissioner may modify, suspend, or revoke an authorization issued

1 under this section if the commissioner determines it necessary to protect the water
 2 rights of other persons or the public interest.

3 * **Sec. 7.** AS 46.15.180(a) is amended to read:

4 (a) A person may not

5 (1) construct works for an appropriation, or divert, impound, withdraw,
 6 or use a significant amount of water from any source without a permit, [OR] certificate
 7 of appropriation, **or authorization issued under this chapter;**

8 (2) violate an order of the commissioner to cease and desist from
 9 preventing any water from moving to a person having a prior right to use it;

10 (3) disobey an order of the commissioner requiring the person to take
 11 steps to cause the water to move to a person having a prior right to use it;

12 (4) fail or refuse to install meters, gauges, or other measuring devices
 13 or control works;

14 (5) violate an order establishing corrective controls for an area or for a
 15 source of water;

16 (6) knowingly make a false or misleading statement in a declaration of
 17 existing right.

18 * **Sec. 8.** AS 46.15.180(a) is amended to read:

19 (a) A person may not

20 (1) construct works for an appropriation, or divert, impound, withdraw,
 21 or use a significant amount of water from any source without a permit **or** [,] certificate
 22 of appropriation [, OR AUTHORIZATION ISSUED UNDER THIS CHAPTER];

23 (2) violate an order of the commissioner to cease and desist from
 24 preventing any water from moving to a person having a prior right to use it;

25 (3) disobey an order of the commissioner requiring the person to take
 26 steps to cause the water to move to a person having a prior right to use it;

27 (4) fail or refuse to install meters, gauges, or other measuring devices
 28 or control works;

29 (5) violate an order establishing corrective controls for an area or for a
 30 source of water;

31 (6) knowingly make a false or misleading statement in a declaration of

existing right.

* **Sec. 9.** AS 46.15.155 is repealed.

* **Sec. 10.** Section 2 of this Act is repealed.

* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to read:

VALIDITY OF EXISTING TEMPORARY PERMITS ISSUED BEFORE THE EFFECTIVE DATE OF THIS ACT. (a) A temporary permit issued before the effective date of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary use of water is valid and remains in effect, notwithstanding that public notice was not provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before the temporary permit was issued.

(b) A temporary permit described in (a) of this section shall be considered to be an authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary permit described in this subsection is subject to the terms and conditions set out in the temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this Act.

* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. (a) Under AS 44.62.125(b)(6), the regulations attorney may change the term "temporary water use permit" in regulations of the Department of Natural Resources concerning water use to "authorization for temporary use of water" as consistent with this Act.

(b) To the extent that the regulations are not inconsistent with this Act, regulations related to water management adopted by the Department of Natural Resources under AS 46.15 and in effect on the effective date of this Act remain in effect until amended or repealed and may be administered and enforced by the Department of Natural Resources.

* **Sec. 13.** Sections 1 - 3, 5 - 7, 11, and 12 of this Act take effect immediately under AS 01.10.070(c).

* **Sec. 14.** Sections 4 and 8 - 10 of this Act take effect July 1, 2002.